

# Georgia Rules and Regulations Administrative Bulletin for December 2021

## OFFICE OF SECRETARY OF STATE ADMINISTRATIVE PROCEDURE DIVISION

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| 111. RULES OF DEPARTMENT OF COMMUNITY HEALTH      | <a href="#">111-8-13-.01</a> --- <a href="#">111-8-13-.06</a>   | adopted | Nov. 30, 2021 | Dec. 20   |
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|   | <a href="#">590-4-4-.01</a>   | amended | Dec. 9, 2021  | Dec. 29   |
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# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-1. BANKS

### Subject 80-1-1. APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

#### 80-1-1-.01 Applications, Registrations and Notifications, Generally

(1) Proposed activities in Georgia by financial institutions may require a form application, a letter application, a form registration, or merely a letter notification to the Department. Certain qualifying institutions may be eligible to shorten the form of application, and may benefit from an expedited processing time including shortened or consolidated notice periods. Such criteria for banks are provided at Department of Banking and Finance Rule [80-1-1-10](#), and Rule [80-6-1-03](#). Criteria for bank holding companies may be found at Rule [80-6-1-04](#). Requirements for all banking institutions to conduct certain other activities have been streamlined to coordinate with federal requirements.

(2) Where forms are required, they may be obtained from the Department.

(3) Other Applications. Within these Rules: Chapter 80-2-1 covers Credit Union activities; Chapter 80-3-1 covers Money Transmitters, Payment Instrument Sellers, and Check Cashers; Chapter 80-6-1 covers Holding Companies; and Chapter 80-11-1 covers Mortgage Lenders and Brokers.

(4) The Department has made available an Applications Manual and a Statement of Policy with details of the procedures required for most activities of regulated institutions in Georgia. Interested persons should consult the Applications Manual, Department's Statement of Policy, Rules, and applicable law which form the basis for Department decisions. These materials are available electronically. The regulations provide an overview; the Applications Manual and Statement of Policy provide detailed instructions.

(5) Fees are provided in DBF Rule Chapter 80-5-1.

(6) References in these Rules to "Code Section", "O.C.G.A.", "Title", "Code of Georgia", and "Section" are to the Official Code of Georgia Annotated.

**Cite as** Ga. Comp. R. & Regs. R. 80-1-1-.01

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Definition" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule entitled "Form of Application, Request for" adopted. F. June 9, 1972; eff. June 29, 1972.

**Repealed:** New Rule of the same title adopted. F. July 12, 1974; eff. Aug. 1, 1974.

**Amended:** F. Aug. 28, 1975; eff. Sept. 17, 1975.

**Repealed:** New Rule of the same title adopted. F. July 13, 1981; eff. Aug. 2, 1981.

**Amended:** Rule retitled "Application Forms, Charter Application Request". F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Amended:** Rule retitled "Applications, Registrations and Notifications, Generally". F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. July 12, 1999; eff. Aug. 1, 1999.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** F. July 7, 2021; eff. July 27, 2021.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-1-1-.02 Financial Institution Applications: Financial Institution Charter**

(1) An application form and package for chartering a Georgia state chartered financial institution is necessary. An organizing group should schedule an initial meeting with the Department to discuss chartering issues, at which time an application package will be distributed. An applicant holding company that has established a lawful banking business in Georgia which meets certain criteria may qualify for expedited processing. Rule [80-6-1-.04](#) and the Applications Manual should be consulted to determine if the applicant meets the necessary criteria.

(2) Specific requirements for documents, meetings with the Department and publication of notices are contained in the Applications Manual and the Statement of Policies of the Department.

(3) Submission and completion of application.

(a) A statement in support of an Application for Approval of a Charter shall be filed with the Department of Banking and Finance. If the Department of Banking and Finance notifies the applicant of deficiencies in the application, the applicant must complete the application within thirty (30) days after receipt of such notification.

(b) An application will not be deemed to have been officially accepted until such time as the required fee has been paid and all portions of the application have been completed to the satisfaction of the Department of Banking and Finance.

**Cite as** Ga. Comp. R. & Regs. R. 80-1-1-.02

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Bank Offices and Bank Facilities" was filed and effective on June 30, 1965.

**Amended:** Rule repealed and a new Rule entitled "Submission and Completion of Applications" adopted. Filed June 9, 1972; effective June 29, 1972.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 12, 1974; effective August 1, 1974.

**Amended:** Filed August 28, 1975; effective September 17, 1975.

**Amended:** Filed November 4, 1975; effective November 24, 1975.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 13, 1981; effective August 2, 1981.

**Amended:** Rule retitled "Financial Institution Applications: Financial Institution Charter" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-1-1-.04 Notification of Filing and Protest**

(1) Applicants will be notified of official acceptance of a bank charter application or receipt of certain other applications for filing unless the department issues an approval of the application within seven days of receipt. For a charter application or merger application pursuant to O.C.G.A. § [7-1-532](#), the applicant shall cause a notice, in such form as the Department may prescribe, to be published in a newspaper of general circulation in the community in which the applicant's main office is located and in a newspaper of general circulation in any other community in which the applicant proposes to engage in business as notification to any interested parties of their right to comment or protest the application, unless otherwise provided in a rule or law pertaining to a specific transaction. The Applications Manual should be referenced for details regarding the publication requirements, if any, for other types of applications.

(2) Publication of notice for public comment on a bank charter application or merger application pursuant to O.C.G.A. § [7-1-532](#) may commence no sooner than five (5) days prior to the date the application is mailed or delivered to the Department. Any person desiring to comment upon or formally protest a bank charter application must notify the Department in writing within 30 days of the date of the publication of the notice in paragraph (1). The comment period may be extended if official acceptance of a bank charter application is delayed. Any person desiring to comment upon or formally protest a merger or acquisition pursuant to O.C.G.A. § [7-1-532](#) as set forth in Rule [80-6-1-.05](#) must notify the Department within 30 days of the date of the publication of the notice in paragraph (1).

(3) All comments and any notices of intent to protest pursuant to paragraph (2) and filed on a timely basis shall be reviewed and considered by the Department. The Commissioner may grant or deny a request for hearing in connection with a protest of an application. The Commissioner shall hold a hearing if he/she determines that written comments are insufficient to make an adequate presentation of the issues raised or if he/she determines that a hearing would otherwise be in the public interest. If a hearing is to be held, the protester and the applicant will be notified of a date as established by the department. Intention to appear at such hearing must be filed by the protester in writing with the Department within 15 days from date of notification of hearing date. Failure to file such intentions shall constitute grounds for canceling any scheduled hearing.

(4) Notwithstanding other provisions of this regulation, final determination to grant, conditionally or otherwise, or deny any application shall be in the sole discretion of the Commissioner of Banking and Finance or his/her legally authorized representative, and such action shall be final; provided, however, unless specified in other law or regulation, no action shall be required before the expiration of 90 days after the date of filing of the application.

**Cite as** Ga. Comp. R. & Regs. R. 80-1-1-.04

**AUTHORITY:** O.C.G.A. §§ [7-1-7](#); [7-1-61](#).

**HISTORY:** Original Rule entitled "Sale of Money Orders at Non-Banking Outlets" was filed and effective on June 30, 1965.

**Amended:** Rule repealed. Filed June 9, 1972; effective June 29, 1972.

**Amended:** Rule entitled "Notification of Filing, Protest" adopted. Filed July 12, 1974; effective August 1, 1974.

**Amended:** Filed July 13, 1981; effective August 2, 1981.

**Amended:** Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

**Amended:** F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Amended:** Rule retitled "Notification of Filing and Protest". F. Jul. 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. Jul. 12, 1999; eff. Aug. 1, 1999.

**Amended:** F. July 7, 2021; eff. July 27, 2021.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-1-1-.05 Public Hearing**

(1) Hearings described in this Rule are held for the purpose of giving the public an opportunity to voice protest of charter applications as well as merger and acquisition applications pursuant to Rule [80-6-1-.05](#) and are not intended to conform to hearings under the Georgia Administrative Procedure Act. Such hearing shall be a forum for the presentation of information which the Commissioner shall consider in ruling on an application.

(2) Hearings under this Rule shall be conducted in accordance with the following procedure:

(a) The presiding officer, who shall be appointed by the department in its sole discretion, will open the hearing with an explanation of the hearing procedure, identification of the parties, and statement of the application at issue.

(b) The applicant shall present a brief opening summary of the contents and purpose of the application.

(c) Following the applicant's statement, each person contesting the application shall present his or her data and material, oral or documentary. The contestants may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(d) Following each contestant's presentation, the applicant shall have an opportunity to rebut, clarify or expand upon any information presented by the contestant with oral or documentary material.

(e) The applicant and contestants shall present their information in concise fashion and the presiding officer shall have the authority to limit such presentations if they are repetitive, inappropriate, or irrelevant.

(3) The Department shall have all of the testimony recorded, retain two copies of the transcript and each contestant and the applicant shall receive a copy. The contestants shall be jointly responsible for all the costs of the transcription of the testimony and for the hearing, unless an applicant requests the hearing, in which case the applicant shall bear the cost. No charge shall be assessed for the presiding officer unless the officer is not an employee of the Department, in which case the cost shall be borne as above.

(4) The obtaining and use of witnesses is the responsibility of the parties. All witnesses will appear voluntarily, but any person appearing as a witness may be subject to questioning by the presiding officer. The refusal of a witness to answer questions may be considered by the Department in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(5) Formal rules of evidence shall not be applicable to these hearings. Documentary material shall be of a size consistent with ease of handling, transportation, and filing. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the Department, and one copy shall be furnished to each contestant and the applicant during the hearing.

(6) The presiding officer or any person designated by the Department shall be the final judge of all procedural questions not governed by this rule. The presiding officer shall have the authority to limit the amount of time available to each party and to impose such other limitations as he or she shall deem reasonable.

(7) In preparation for a final determination on the application, the Department shall review the exhibits and the testimony as recorded, and the presiding officer shall make a recommendation of findings to the Commissioner.

**Cite as** Ga. Comp. R. & Regs. R. 80-1-1-.05

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Public Hearing" adopted. F. July 12, 1974; eff. Aug. 1, 1974.

**Amended:** F. Aug. 28, 1975; eff. Sept. 17, 1975.

**Amended:** F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. July 7, 2021; eff. July 27, 2021.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-3. RULES OF DEPARTMENT OF BANKING AND FINANCE MONEY TRANSMISSION

### Subject 80-3-1. DISCLOSURES, LOCATIONS, AND AUTHORIZED AGENTS

#### 80-3-1-.01 Definitions, Activities, and Locations

(1) For purposes of this Rule Chapter and Rule [80-5-1-.02\(1\)](#), the terms that are defined in O.C.G.A. § [7-1-680](#) shall have the identical meaning.

(2) Dual Purpose. A license for the sale of payment instruments shall also permit the licensee to conduct money transmission, but the licensee must clearly inform the Department in writing that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.

(3) Every licensee giving notices of additional locations or changes in locations operated by the licensee shall do so in a form and manner as provided by the Department.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-1-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-681](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Sale of Money Orders at Non-Banking Outlets" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule of same title adopted. F. Nov. 19, 1975; eff. Dec. 9, 1975.

**Repealed:** New Rule entitled "Exemptions" adopted. F. July 13, 1981; eff. Aug. 2, 1981.

**Repealed:** New Rule entitled "Sale of Checks" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.

**Amended:** F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Amended:** Rule retitled "Check Sellers". F. Aug. 26, 1997; eff. Sept. 15, 1997.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. July 12, 1999; eff. Aug. 1, 1999.

**Amended:** Rule retitled "Check Sellers and Money Transmitters: Exemptions and Requirements". F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Aug. 15, 2005; eff. Sept. 4, 2005.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Aug. 15, 2007; eff. Sept. 4, 2007.

**Amended:** Title changed to "Payment Instrument Sellers and Money Transmitters." F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** F. Jan. 6, 2016; eff. Jan. 26, 2016.

**Amended:** F. June 27, 2018; eff. July 17, 2018.

**Amended:** F. July 9, 2019; eff. July 29, 2019.

**Amended:** F. Jan. 8, 2021; eff. Jan. 28, 2021.

**Amended:** F. July 7, 2021; eff. July 27, 2021.

**Amended:** New title, "Definitions, Activities, and Locations." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.02 Disclosures and Receipts**

(1) Every licensee or authorized agent of a licensee, unless such authorized agent is a financial institution whose deposits are federally insured, shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license.

(2) Each customer that is a payment instrument holder shall be provided with a written receipt or other evidence of acceptance of the issuance of payment instruments or the transmission of money showing the name of the licensee or trade name of the licensee that is registered with the Department, authorized agent identifier information, the date of issuance of the payment instrument or of the transmission of money, the dollar amount of the issued payment instrument or of the transmitted money, and the fee charged to the customer.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-1-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Display of License Certificate" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule of same title adopted. F. Nov. 19, 1975; eff. Dec. 9, 1975.

**Repealed:** New Rule entitled "Cashers of Checks" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.

**Amended:** F. Sept. 13, 1991; eff. Oct. 3, 1991.

**Amended:** Rule retitled "Check Cashers". F. Aug. 26, 1997; eff. Sept. 15, 1997.

**Amended:** F. Dec. 18, 2000; eff. Jan 7, 2001.

**Amended:** F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Aug. 15, 2005; eff. Sept. 4, 2005.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Aug. 15, 2007; eff. Sept. 4, 2007.

**Amended:** F. Aug. 4, 2008; eff. Aug. 24, 2008.

**Amended:** F. Aug. 27, 2009; eff. Sept. 6, 2009.

**Amended:** F. Nov. 2, 2010; eff. Nov. 22, 2010.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** F. June 27, 2018; eff. July 17, 2018.

**Amended:** F. Jan. 8, 2021; eff. Jan. 28, 2021.

**Amended:** New title, "Disclosures and Receipts." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.03 Authorized Agents**

(1) Licensees may designate authorized agents to engage in the sale of payment instruments or money transmission at non-banking outlets and the place of business of such authorized agents will not be construed as a branch office. The authorized agent must be bonded and the licensee made solely liable for the payment of the issued payment instruments or transmitted money upon proper presentation and demand. The responsibility of both the licensee and its authorized agent shall be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the authorized agent. The licensee's blanket bond coverage shall extend to cover transactions by the authorized agent and the conveyance of the funds to the licensee or the licensee's depository financial institution.

(2) Licensees are required to submit authorized agent information, including notices of additional locations or changes in locations operated by an authorized agent, to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. The notice required by this section shall also include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

(3) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee in accordance with the terms of the contract between the licensee and the authorized agent.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-1-.03

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Report of Criminal Violations" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule entitled "Quarterly Notice of Agents and Locations" adopted. F. Nov. 19, 1975; eff. Dec. 9, 1975.

**Repealed:** New Rule entitled "Wire Transfer Services" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.

**Amended:** F. Aug. 26, 1997; eff. Sept. 15, 1997.

**Amended:** Rule retitled "Money Service Businesses: Compliance With Federal Requirements". F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Aug. 15, 2007; eff. Sept. 4, 2007.

**Amended:** F. Aug. 17, 2009; eff. Sept. 6, 2009.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 27, 2018; eff. July 17, 2018.

**Amended:** New title, "Authorized Agents." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.04 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.04

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Financial Statements" adopted. F. June 2, 1977; eff. June 22, 1977.

**Repealed:** New Rule entitled "Reports of Large Currency Transactions" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.

**Amended:** F. Nov. 2, 1994; eff. Nov. 22, 1994.

**Amended:** Rule retitled "Reports of Large Currency Transactions by Check Cashers, Check Sellers and Other Money Transmitters". F. Aug. 26, 1997; eff. Sept. 15, 1997.

**Amended:** Rule retitled "Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Check Sellers and Money Transmitters". F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** Title changed to "Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Payment Instrument Sellers and Money Transmitters." F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 27, 2018; eff. July 17, 2018.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.06 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.06

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Reports of Apparent Criminal Irregularity by Check Cashers, Check Sellers, and Other Money Transmitters" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1997.

**Amended:** Rule retitled "Reports of Apparent Criminal Irregularity by Check Cashers, Check Sellers, Money Transmitters, and Agents". F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Sep. 18, 2012; eff. Oct. 8, 2012.

**Amended:** Title changed to "Reports of Apparent Criminal Irregularity by Check Cashers, Payment Instrument Sellers, Money Transmitters, and Authorized Agents." F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 27, 2018; eff. July 17, 2018.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.07 Repealed and Reserved**

**Cite as** Ga. Comp. R. & Regs. R. 80-3-1-.07

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Administrative Fines and Penalties" adopted. F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Sept. 1, 2004; eff. Sept. 21, 2004.

**Amended:** F. Aug. 15, 2005; eff. Sept. 4, 2005.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Aug. 15, 2007; eff. Sept. 4, 2007.

**Amended:** F. Aug. 4, 2008; eff. Aug. 24, 2008.

**Amended:** F. Nov. 2, 2010; eff. Nov. 22, 2010.

**Amended:** F. Nov. 7, 2013; eff. Nov. 27, 2013.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. Jan. 6, 2016; eff. Jan. 26, 2016.

**Note:** Correction of non-substantive typographical error, duplicate entry of "**Amended:** F. Jan. 6, 2016; eff. Jan. 26, 2016." deleted from History. Effective Mar. 8, 2016.

**Amended:** F. June 29, 2017; eff. July 19, 2017.

**Amended:** F. June 27, 2018; eff. July 17, 2018.

**Amended:** F. Jan. 8, 2021; eff. Jan. 28, 2021.

**Amended:** F. July 7, 2021; eff. July 27, 2021.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.08 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.08

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "State Requirements for Financial Institutions" adopted. F. July 28, 2003; eff. Aug. 17, 2003.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.09 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.09

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Verification of Lawful Presence Citizenship Affidavit" adopted. F. Nov. 7, 2013; eff. Nov. 27, 2013.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-1-.10 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.10

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Nationwide Multistate Licensing System and Registry" adopted. F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

# **Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE**

## **Chapter 80-3. RULES OF DEPARTMENT OF BANKING AND FINANCE MONEY TRANSMISSION**

### **Subject 80-3-2. FINANCIAL CONDITION, REPORTING, AND CONTROL**

#### **80-3-2-.01 Reports of Condition**

Licensees are required to prepare and submit various reports of condition.

(1) Each licensee shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. Audits will be provided to the Department within ten (10) days of the Department's request for such information.

(2) Each licensee shall submit to the Department, through NMLS, a Money Services Businesses ("MSB") Call Report on a quarterly basis in a form and manner prescribed by the Department, no later than forty-five (45) days after the end of each calendar quarter.

(3) Each licensee shall file, no later than August 14th of each year, an activity statement in a form and manner prescribed by the Department, which shall include, but not be limited to, the average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia during the second calendar quarter. Licensees submitting an activity statement to the Department are certifying to the material accuracy and validity of the information as submitted.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-2-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Reports of Condition" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

#### **80-3-2-.02 Net Worth**

Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of selling payment instruments or money transmission. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-2-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Net Worth" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-2-.03 Surety Bond**

If a licensee's average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia, as calculated by the licensee for each calendar quarter, exceeds the amount of the licensee's surety bond by more than ten percent (10%), the licensee must promptly, which in no event shall be later than twenty (20) days after such calculation, provide additional coverage to fully account for the increase in outstandings pursuant to O.C.G.A. § [7-1-683.2\(b\)](#). However, notwithstanding the above, the amount of the surety bond required by O.C.G.A. § [7-1-683.2\(b\)](#) shall not exceed \$2,000,000.00.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-2-.03

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Surety Bond" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-2-.04 Change in Control**

A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such proposed change in ownership or change in control of the licensee as required by O.C.G.A. § [7-1-688](#) at least thirty (30) days prior to the proposed change.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-2-.04

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Change in Control" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

# **Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE**

## **Chapter 80-3. RULES OF DEPARTMENT OF BANKING AND FINANCE MONEY TRANSMISSION**

### **Subject 80-3-3. BOOKS AND RECORDS**

#### **80-3-3-.01 Minimum Books and Records**

Each licensee shall make, keep, and preserve the following books, accounts, and other records:

- (1) A record of each payment instrument sold;
- (2) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;
- (3) Settlement sheets received from authorized agents;
- (4) Bank statements and bank reconciliation records;
- (5) Records of outstanding payment instruments;
- (6) Records of each payment instrument paid;
- (7) A list of the names and addresses of all of the licensee's authorized agents;
- (8) A copy of all currency transaction reports and suspicious activity reports that are required by law to be filed by the licensee and the related work papers;
- (9) For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; and
- (10) Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-3-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Minimum Books and Records" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

#### **80-3-3-.02 Examinations**

Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § [7-1-682](#) to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books,

accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-3-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Examinations" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

# **Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE**

## **Chapter 80-3. RULES OF DEPARTMENT OF BANKING AND FINANCE MONEY TRANSMISSION**

### **Subject 80-3-4. ADMINISTRATIVE FINES AND PENALTIES**

#### **80-3-4-.01 Administrative Fines**

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.

(2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.

(3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.

(4) The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § [7-1-689](#) and Rules [80-3-1-.01\(3\)](#), [80-3-1-.02\(2\)](#), [80-3-1-.03](#), 80-3-2-.01, 80-3-3-.01, or 80-3-3-.02, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rule [80-3-1-.01\(3\)](#), [80-3-1-.02\(2\)](#), [80-3-1-.03](#), 80-3-2-.01, 80-3-3-.01 or 80-3-3-.02.

(b) Operating Without Proper License. Any person who acts as a payment instrument seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or who acquires a payment instrument seller or money transmission business without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day.

(c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § [7-1-684\(b\)](#), when such covered employee has not complied with the remedies provided for in O.C.G.A. § [7-1-684\(b\)](#) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee.

(d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § [7-1-686\(d\)](#) and Rules [80-3-1-.01\(3\)](#) and [80-3-1-.03\(2\)](#), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.

(e) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to

employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.

(f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule [80-3-1-.03\(2\)](#), shall be subject to a fine of five thousand dollars (\$5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.

(g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule [80-3-1-.02\(2\)](#), it shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.

(h) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § [7-1-688](#) and Rule 80-3-2-.04 shall be subject to a fine of one thousand dollars (\$1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § [7-1-687](#) shall be subject to a fine of one thousand dollars (\$1,000).

(i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the selling of payment instruments or money transmission, shall be subject to a fine of five thousand dollars (\$5,000).

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars (\$1,000) for each such occurrence.

(k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-6-.01, 80-3-6-.02, and 80-3-6-.03, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

(o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's

information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(p) Failure to Post Required License. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

(q) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § [7-1-692](#) shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation.

(r) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(s) Failure to Timely Increase the Amount of the Surety Bond. Any licensee that fails to increase the amount of the applicable surety bond when its average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid, as required by Rule 80-3-2-.03, exceed the face amount of the surety bond by ten percent (10%) or more shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-4-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#), [7-1-694](#).

**HISTORY:** Original Rule entitled "Administrative Fines" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-3. RULES OF DEPARTMENT OF BANKING AND FINANCE MONEY TRANSMISSION

### Subject 80-3-5. LICENSING

#### 80-3-5-.01 Verification of Lawful Presence Citizenship Affidavit

(1) Pursuant to O.C.G.A. § [50-36-1](#), the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a payment instrument seller or money transmitter on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

(2) In the event the individual that executed the lawful presence affidavit on behalf of the company applicant is no longer an owner or executive officer of the licensee, the licensee must notify the Department within ten (10) business days following the date of the occurrence and provide the Department with an affidavit from a current owner or executive officer verifying his or her lawful presence on behalf of the licensee. The failure to disclose within ten (10) business days that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or to timely submit a new affidavit from a current owner or executive officer may subject the license to revocation, suspension, and other administrative action.

Cite as Ga. Comp. R. & Regs. R. 80-3-5-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#), [7-1-682](#), [7-1-683](#).

**HISTORY:** Original Rule entitled "Verification of Lawful Presence Citizenship Affidavit" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

#### 80-3-5-.02 Nationwide Multistate Licensing System and Registry

(1) License issuance and renewals.

(a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry ("NMLSR") unless otherwise expressly exempted from this requirement by the Department in writing. Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

(b) All licenses issued shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late fee as set forth in Rule [80-5-1-.02](#). A renewal application is not deemed received until all required information and corresponding fees have been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license will expire. Unless a proper renewal application has been received any license which is not renewed on or before December 31 will require the renewal applicant to file a reinstatement application in order to conduct business as a check casher, money transmitter, or payment instrument seller in the State after that date.

(2) The responsibility of applicants and licensees to update information in NMLSR.

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.

(b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the applicant's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.

(c) It shall be the responsibility of each applicant for a license and each licensee to ensure that its control persons keep current at all times their information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the control person within ten (10) business days of the date of the event necessitating the change. For purposes of this Rule, control person means any individual that has the power, either directly or indirectly, to direct or cause the direction of management and policies of an applicant or licensee, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(d) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.

(3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-5-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#), [7-1-683.3](#).

**HISTORY:** Original Rule entitled "Nationwide Multistate Licensing System and Registry" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

# **Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE**

## **Chapter 80-3. RULES OF DEPARTMENT OF BANKING AND FINANCE MONEY TRANSMISSION**

### **Subject 80-3-6. COMPLIANCE WITH FEDERAL REQUIREMENTS**

#### **80-3-6-.01 Money Service Businesses: Compliance with Federal Requirements**

(1) For the purposes of this Rule, Money Service Businesses ("MSBs") refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act"), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United States Department of the Treasury and to comply with other recordkeeping and compliance laws.

(2) A licensee under Article 4 of Chapter 1 of Title 7 that satisfies the definition of an MSB under the Bank Secrecy Act, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.

(3) All licensees under Article 4 of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act provided the licensees are required to do so under the Bank Secrecy Act. Other recordkeeping requirements required by state law are provided for in Rules 80-3-3-.01 and 80-3-3-.02. Licensees may consult <https://www.fincen.gov/resources/financial-institutions/money-services-businesses> for questions about the federal requirements.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-6-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Money Service Businesses: Compliance with Federal Requirements" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

#### **80-3-6-.02 Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements**

(1) Persons engaged in the business of selling payment instruments or transmitting money and authorized agents of money transmitters or payment instrument sellers shall be subject to the filing requirements for large currency transactions as prescribed in Article 11 of Chapter 1 of Title 7, and as further directed herein.

(2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.

(3) Recordkeeping. Georgia law regarding such recordkeeping for payment instrument sellers and money transmitters shall be satisfied by compliance with all applicable federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act.

(4) Records required to be maintained under Paragraph (3) of this rule may be maintained in a photographic, electronic, or other similar form at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the date of the Department's request.

(5) Currency transaction reporting requirements for financial institutions are contained in Chapter 80-9-1 of the Department's regulations.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-6-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-6-.03 Reports of Apparent Criminal Irregularity by Licensees and Authorized Agents**

(1) Sale of payment instruments and money transmitter licensees shall file with the Department the name, location, and federal tax identification number of any authorized agent within this state who has failed to remit to the licensee the proceeds received from the sale of the licensee's payment instruments or from licensee's money transmission activities in accordance with the terms of the contract between the licensee and the authorized agent or whose authorized agency status has been revoked, suspended, terminated, cancelled, or voluntarily closed due to an outstanding liability due to the licensee. The report shall state the aggregate amount of unremitted payment instrument sales or money transmission proceeds due to the licensee and any provisions which have been made to recover same.

(2) Structuring to avoid reporting.

(a) Unless otherwise reporting to the appropriate federal agency under Rule 80-3-6-.02(2), every payment instrument seller, authorized agent of a payment instrument seller, money transmitters, and authorized agents of money transmitters shall report to the Department any instance involving such sale of payment instruments or money transmission where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:

1. Caused or attempted to cause a currency transaction report required under Article 11 of Chapter 1 of Title 7 or the Bank Secrecy Act not to be filed;

2. Caused or attempted to cause a currency transaction report required under Article 11 of Title 7 or the Bank Secrecy Act to be filed containing a material omission or misstatement as defined in O.C.G.A. § [7-1-912](#);

3. Completed a structuring (as defined in O.C.G.A. § [7-1-912](#)), assisted in structuring, attempted a structuring, or attempted to assist in structuring any currency transaction.

(b) Authorized agents of payment instrument sellers and money transmitters shall not be required to report as provided in subsection (a) where the licensee has advised the authorized agent in writing that the licensee operates a system of internal procedures designed to gather the pertinent data and file the reports required in subsection (a).

(3) Any licensed payment instrument seller or money transmitter shall notify the Department within ten (10) business days of any knowledge or discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee or by any officer, director, or employee of an authorized agent occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts

believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.

(4) Licensees governed by these Rules shall be subject to amendments of the Bank Secrecy Act which may impose other reporting obligations for suspicious transactions.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-6-.03

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "Reports of Apparent Criminal Irregularity by Licensees and Authorized Agents" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-3-6-.04 State Requirements for Financial Institutions**

(1) A financial institution required to report any currency transaction in excess of ten thousand dollars (\$10,000), including a transaction in excess of one hundred thousand dollars (\$100,000), may satisfy state currency transaction filing and reporting requirements by filing a timely report (FinCEN Form 104) with the federal authority designated in the Currency and Foreign Transaction Reporting Act of 1970 ("Bank Secrecy Act").

(2) Banks and credit unions are required to follow federal guidelines and requirements for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting.

**Cite as** Ga. Comp. R. & Regs. R. 80-3-6-.04

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-690](#).

**HISTORY:** Original Rule entitled "State Requirements for Financial Institutions" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-4. CHECK CASHERS

### Subject 80-4-1. CHECK CASHERS

#### 80-4-1-.01 Books and Records; Other Requirements

(1) For purposes of this Rules Chapter and Rule [80-5-1-.02\(2\)](#), the terms that are defined in O.C.G.A. § [7-1-700](#) shall have the identical meaning.

(2) Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of cashing payment instruments. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(3) Every licensee shall maintain an original written authorization or other evidence of verification attesting to the fact that each specific corporation or other business association has authorized its officers and employees or specific officers or employees to present payment instruments, drawn by the corporation or other business association payable to cash or drawn by any party payable to the corporation or other business association, to a licensee for cashing. A check casher shall not cash a payment instrument payable to persons other than natural persons unless the check casher has on file such written authorization or verification indicating that the payee has authorized the presentation of such payment instruments on behalf of the payee.

(4) Every licensee shall post in prominent view of each teller window or other customer service station a copy of its license. Advertising material related to the cashing of payment instruments and distributed within this state shall contain the licensee's name, which shall conform to the name on record with the Department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry.

(5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every licensee.

(b) A record of cashed payment instruments shall be maintained by each licensee as a log of all transactions occurring each day. The log must be maintained in chronological order based on the date of negotiation of the payment instrument.

1. For all cashed payment instruments, such record shall include:

(i) The date of negotiation of the payment instrument;

(ii) Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the payment instrument;

(iii) Amount of the payment instrument; and

(iv) Amount of fee charged for cashing the payment instrument.

2. For all cashed payment instruments in an amount of one thousand dollars (\$1,000) or more, such record shall also include:

(i) Date of the payment instrument;

(ii) Payment instrument number;

(iii) Name and location or routing number of the payor bank or, if a pre-paid card, the branded card name; and

(iv) Name of the drawer of the payment instrument.

(c) A daily cash reconciliation statement shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation statement shall separately reflect cash received from the sale of payment instruments (if also licensed as a seller of payment instruments or an authorized agent of such licensee), redemption of returned items, bank cash withdrawals, cash disbursed in cashing of payment instruments, and bank cash deposits.

(d) A general ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The general ledger shall be posted from the daily record of cashed payment instruments or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated general ledger reflecting activity at two or more locations under the same license may be maintained provided books of original entry are separately maintained for each location.

(e) For all entities cashing payment instruments, each customer cashing a payment instrument shall be offered the option of receiving a receipt showing the name of the licensee or trade name of the licensee, the transaction date, the amount of the payment instrument, and the fee charged.

(f) All licensees shall maintain supporting documentation for all reports and logs required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(6) All payment instruments drawn on a financial institution domiciled in the United States and cashed by a licensee shall be sent for deposit to the licensee's account at a financial institution authorized to do business in the State of Georgia whose deposits are federally insured or sent for collection not later than the close of business on the next business day after the date on which the payment instrument was cashed.

(7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § [7-1-701.1](#) to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked.

(8) The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they cash payment instruments, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted. A licensee must provide the Department with written notice at least thirty (30) days prior to it conducting business at any additional outlets.

(9) A licensee shall notify the Department in writing within fifteen (15) days of the closing of the portion of its business that cashes payments instruments and shall surrender its original license to the Department at that time.

(10) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee as required by O.C.G.A. § [7-1-705.1](#) at least thirty (30) days prior to the proposed change.

(11) Every licensee giving notices of changes in locations operated by the licensee over those previously reported shall do so at least thirty (30) days prior to conducting business at the new location and on forms provided by the Department.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-701.1](#), [7-1-702.1](#), [7-1-706.1](#).

**HISTORY:** Original Rule entitled "Definitions" was filed on July 5, 1973; effective July 25, 1973.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Amended:** Filed July 13, 1981; effective August 2, 1981.

**Amended:** Filed October 12, 1982; effective November 2, 1982.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Books and Records; Other Requirements." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-4-1-.02 Money Service Businesses: Compliance with Federal Requirements**

(1) For the purposes of this Rule, Money Service Businesses ("MSBs") refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act"), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United States Department of the Treasury and to comply with other recordkeeping and compliance laws.

(2) A licensee under Article 4A of Chapter 1 of Title 7 that satisfies the definition of an MSB under the Bank Secrecy Act, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.

(3) All licensees under Article 4A of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act provided the licensees are required to do so under the Bank Secrecy Act. Other recordkeeping requirements required by state law are provided for in Rule [80-4-1-.01\(5\)](#). Licensees may consult <https://www.fincen.gov/resources/financial-institutions/money-services-businesses> for questions about the federal requirements.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-706.1](#).

**HISTORY:** Original Rule entitled "Incorporation" was filed on July 5, 1973; effective July 25, 1973.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Amended:** Filed July 13, 1981; effective August 2, 1981.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Money Service Businesses: Compliance with Federal Requirements." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-4-1-.03 Reports of Large Currency Transactions, Record-Keeping, and Suspicious Activity Reporting Requirements for Check Cashers**

(1) Persons engaged in the business of cashing payment instruments shall be subject to the filing requirements for large currency transactions as prescribed in Article 11 of Chapter 1 of Title 7, and as further directed herein.

(2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.

(3) Recordkeeping. Georgia law regarding such recordkeeping for check cashers shall be satisfied by compliance with all applicable federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act. A licensed check casher that does not satisfy the definition of a check casher under the Bank Secrecy Act shall comply with the state recordkeeping requirements at Rule [80-4-1-.01\(5\)](#).

(4) Records required to be maintained under Paragraph (3) of this rule may be maintained in a photographic, electronic, or other similar form at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the date of the Department's request.

(5) Currency transaction reporting requirements for financial institutions are contained in Chapter 80-9-1 of the Department's regulations.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.03

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-706.1](#).

**HISTORY:** Original Rule entitled "Bonds" was filed on July 5, 1973; effective July 25, 1973.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Reports of Large Currency Transactions, Record-Keeping, and Suspicious Activity Reporting Requirements for Check Cashers." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-4-1-.04 Reports of Apparent Criminal Irregularity by Check Cashers**

(1) Structuring to avoid reporting. Unless otherwise reporting to the appropriate federal agency under Paragraph (2) of Rule [80-4-1-.03](#), every check casher and other persons who cash payment instruments for a fee shall report to the Department any instance involving such cashing of payment instruments where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:

(a) Caused or attempted to cause a currency transaction report required under Article 11 of Chapter 1 of Title 7 or the Bank Secrecy Act not to be filed;

(b) Caused or attempted to cause a currency transaction report required under Article 11 of Title 7 or the Bank Secrecy Act to be filed containing a material omission or misstatement as defined in O.C.G.A. § [7-1-912](#);

(c) Completed a structuring (as defined in O.C.G.A. § [7-1-912](#)), assisted in structuring, attempted a structuring, or attempted to assist in structuring any currency transaction.

(2) Any licensed check casher shall notify the Department within ten (10) business days of any knowledge or discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.

(3) Licensees governed by these Rules shall be subject to amendments of the Bank Secrecy Act which may impose other reporting obligations for suspicious transactions.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.04

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-706.1](#).

**HISTORY:** Original Rule entitled "Books, Records, and Accounts" was filed on July 5, 1973; effective July 25, 1973.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Amended:** Filed July 13, 1981; effective August 2, 1981.

**Amended:** Filed October 12, 1982; effective November 2, 1982.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Reports of Apparent Criminal Irregularity by Check Cashers." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-4-1-.05 Administrative Fines and Penalties**

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4A of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.

(2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.

(3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.

(4) The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § [7-1-706\(a\)](#) and Rules [80-4-1-.01\(2\)](#) or [80-4-1-.01\(5\)](#), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rules [80-4-1-.01\(2\)](#) or [80-4-1-.01\(5\)](#).

- (b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee has charged fees for cashing payment instruments in excess of the amount set forth in O.C.G.A. § [7-1-707\(f\)](#), such licensee shall be subject to a fine of five thousand dollars (\$5,000) per occurrence.
- (c) Posting of Charges. Any licensee who does not display, at all locations, a notice stating the charges/fees for cashing payment instruments in accordance with O.C.G.A. § [7-1-707.1](#) shall be subject to a fine of five hundred dollars (\$500).
- (d) Operating Without Proper License. Any person who acts as a check casher prior to receiving a current license required under Article 4A of Chapter 1 of Title 7, or who acquires a business that cashes payment instruments and operates without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day.
- (e) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § [7-1-703\(b\)](#), when such covered employee has not complied with the remedies provided for in O.C.G.A. § [7-1-703\(b\)](#) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee.
- (f) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.
- (g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § [7-1-707\(c\)](#) shall be subject to a fine of five thousand dollars (\$5,000) per occurrence.
- (h) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with cashing payment instruments, shall be subject to a fine of five thousand dollars (\$5,000).
- (i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § [7-1-707\(d\)](#) and Rule [80-4-1-.01\(3\)](#) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.
- (j) Advertising - "No Identification Required." A licensee that advertises that it will cash payment instruments with no identification required will be subject to a fine of one thousand dollars (\$1,000).
- (k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § [7-1-707\(e\)](#) shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
- (l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be a five thousand dollar (\$5,000) fine.
- (m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence.
- (n) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval

of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § [7-1-705.1](#) and Rule [80-4-1-.01](#) shall be subject to a fine of one thousand dollars (\$1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § [7-1-705](#) shall be subject to a fine of one thousand dollars (\$1,000).

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules [80-4-1-.02](#), [80-4-1-.03](#), and [80-4-1-.04](#), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to comply with the requirements of Rule [80-4-1-.01\(4\)](#) shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

(q) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed check casher that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed check casher that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

(r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(s) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § [7-1-708](#) shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation.

(t) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.05

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-708.2](#).

**HISTORY:** Original Rule entitled "Reserves" was filed on July 5, 1973; effective July 25, 1973.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Amended:** Filed July 13, 1981; effective August 2, 1981.

**Amended:** F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Administrative Fines and Penalties." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-4-1-.06 Verification of Lawful Presence Citizenship Affidavit**

(1) Pursuant to O.C.G.A. § [50-36-1](#), the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a check casher on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

(2) In the event the individual that executed the lawful presence affidavit on behalf of the company applicant is no longer an owner or executive officer of the licensee, the licensee must notify the Department within ten (10) business days following the date of the occurrence and provide the Department with an affidavit from a current owner or executive officer verifying his or her lawful presence on behalf of the licensee. The failure to disclose within ten (10) business days that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or to timely submit a new affidavit from a current owner or executive officer may subject the license to revocation, suspension, and other administrative action.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.06

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-702](#).

**HISTORY:** Original Rule entitled "Investments" was filed on July 5, 1973; effective July 25, 1973.

**Amended:** Filed May 3, 1974; effective May 23, 1974.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Amended:** Filed October 12, 1982, effective November 2, 1982.

**Amended:** F. Sept. 27, 1995; eff. Oct. 16, 1995.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Verification of Lawful Presence Citizenship Affidavit." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-4-1-.07 Nationwide Multistate Licensing System and Registry**

(1) License issuance and renewals.

(a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry ("NMLSR") unless otherwise expressly exempted from this requirement by the Department in writing. Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

(b) All licenses issued shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late fee as set forth in Rule [80-5-1-.02](#). A renewal application is not deemed received until all required information and corresponding fees have been provided by the licensee. A proper renewal application not received on or before the

December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license will expire. Unless a proper renewal application has been received any license which is not renewed on or before December 31 will require the renewal applicant to file a reinstatement application in order to conduct business as a check casher in the State after that date.

(2) The responsibility of applicants and licensees to update information in NMLSR.

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.

(b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the applicant's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.

(c) It shall be the responsibility of each applicant for a license and each licensee to ensure that its control persons keep current at all times their information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the control person within ten (10) business days of the date of the event necessitating the change. For purposes of this Rule, control person means any individual that has the power, either directly or indirectly, to direct or cause the direction of management and policies of an applicant or licensee, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(d) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.

(3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

**Cite as** Ga. Comp. R. & Regs. R. 80-4-1-.07

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-702.2](#).

**HISTORY:** Original Rule entitled "Borrowing Power" was filed on July 5, 1973, effective July 25, 1973.

**Amended:** Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.

**Repealed:** F. June 20, 2016; eff. July 10, 2016.

**Adopted:** New Rule entitled "Nationwide Multistate Licensing System and Registry." F. Dec. 16, 2021; eff. Jan. 5, 2022.

# **Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE**

## **Chapter 80-5. FINANCIAL INSTITUTIONS**

### **Subject 80-5-1. SUPERVISION, EXAMINATION, REGISTRATION AND INVESTIGATION FEES ADMINISTRATIVE LATE FEES**

#### **80-5-1-.01 General**

(1) The appropriation for the Department of Banking and Finance is enacted by the General Assembly and signed into law annually. An annual fee shall be assessed on financial institutions supervised or regulated by the Department. These fees are remitted to the Office of the State Treasurer.

(2) Annual assessments are for the Department's fiscal year, July 1 through June 30. Assessments for depository institutions are based upon each financial institution's assets reported on the Report of Condition preceding the assessment date. All financial institutions will be assessed, either for a full year or for a partial year, as appropriate. Subject to an increased assessment due to an acquisition, annual assessments for Georgia chartered financial institutions existing on July 1, will be based on June 30 Call Report Assets, should be delivered on or about September 10, and are due and payable no later than September 30. A late payment penalty may be assessed for the full year billing at any time after the due date. Subject to the provisions herein, assessments related to a conversion to a Georgia state chartered institution or a charter issuance after July 1 will be prorated for the number of full and partial months as a Georgia state chartered institution and will be delivered as soon as practical and shall be due and payable upon receipt. A late payment penalty may be assessed for the partial year billing fourteen days after bill issuance. Under no circumstances, shall any portion of an annual assessment paid to the Department be refunded.

(3) Newly chartered financial institutions will not be assessed for the first three full months plus any partial month from the begin business date. Thereafter, annual assessments as set forth herein shall apply. The initial assessment period for newly chartered financial institutions shall begin on the first day of the month after the first three full calendar months from the begin business date.

(4) Assessment fees for a Georgia state chartered institution that is acquired by a federal or national institution or institution chartered by another state after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a Georgia state chartered institution. A Georgia state chartered institution that is acquired by a federal or national institution or an institution chartered by another state after the assessment date, shall pay the full assessment.

(5) Assessment fees for a Georgia state chartered institution that is acquired by another Georgia state chartered institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and offices of the combined institutions as of June 30. A Georgia state chartered institution that is acquired after the assessment date, shall pay the full assessment.

(6) Assessment fees for a Georgia state chartered institution that converts to a federal or national institution or institution chartered by another state after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a Georgia state chartered institution. A Georgia state chartered institution that converts to a federal or national institution or institution chartered by another state after the assessment date, shall pay the full assessment.

(7) Assessment fees for a national bank, federal credit union, or institution chartered by another state that is acquired by a Georgia state chartered institution after July 1 will be prorated based on the number of full and partial months the additional assets of the national bank, federal credit union, or the institution chartered by another state were combined into the Georgia state chartered institution.

(8) The Department has made available an Applications Manual, which manual includes the fees for each type of application, registration and notification.

(9) The Department has policies which provide that certain qualifying institutions may expedite applications or submit shortened forms of applications. The fees for these expedited processes have been reduced accordingly. The criteria for banks to qualify for such treatment is set forth in Rule [80-1-1-.10](#) while the criteria for bank holding companies to qualify is set forth in Rule [80-6-1-.03](#).

**Cite as** Ga. Comp. R. & Regs. R. 80-5-1-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-41](#), [7-1-61](#).

**HISTORY:** Original Rule entitled "General" adopted. F. Nov. 4, 1975; eff. Nov. 24, 1975.

**Repealed:** New Rule of same title adopted. F. Mar 24, 1982; eff. June 13, 1982.

**Amended:** F. June 28, 1984; eff. Aug. 1, 1984, as specified by the Agency.

**Amended:** F. June 10, 1988; eff. June 30, 1988.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998. F. Nov. 2, 2010; eff. Nov. 22, 2010.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** F. Jan. 8, 2021; eff. Jan. 28, 2021.

**Amended:** F. July 7, 2021; eff. July 27, 2021.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-6. HOLDING COMPANIES

### Subject 80-6-1. APPLICATIONS AND ACQUISITIONS

#### 80-6-1-.01 Holding Companies, Generally

(1) Georgia's holding company statutes (Code Sections [7-1-605](#) through [7-1-612](#)) govern all holding companies which have or wish to acquire, by purchase or formation, banks chartered by the Department. Once a holding company acquires a Georgia bank, it shall be registered annually with the Department. Subsequent acquisitions by that holding company may require approval, a letter form notification, or after the fact notification, depending upon the relationship of the acquisition to Georgia banks. The Department requires the submission of certain reports from Georgia bank holding companies and from holding companies that own Georgia banks.

(2) Interstate acquisitions by holding companies are dealt with in Part 19 of Article 2 of Title 7; related mergers of the banks in Part 20 of Article 2 of Title 7. Definitions in those Parts should be applied to interstate transactions.

(3) Expedited processing is available to holding companies which qualify under the criteria in Department of Banking and Finance Rule [80-6-1-.03](#) or [80-6-1-.04](#), depending on the transaction. A letter form application with a copy of the federal application may be used and public notice may be coordinated so long as the Department is referenced in the notice as a regulator to whom comments should be submitted. A holding company lawfully owning a bank chartered by the Department that meets the criteria in Rule [80-6-1-.04](#) may qualify for expedited processing for formation of a de novo bank, provided the de novo bank is to be wholly owned by the holding company.

(4) A bank holding company which acquires a bank chartered by the Department must apply and seek approval from the Department pursuant to Code Section [7-1-622](#). Approval to become a bank holding company of a Georgia bank as defined in Code Section [7-1-605](#) is similarly required. A bank holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, may form a de novo bank with Department approval pursuant to Code Section [7-1-608\(b\)\(3\)](#).

(5) An Applications Manual and a Statement of Policies are available from the Department. Details of and policies underlying all required applications, notifications and registrations are contained in these manuals.

(6) Fees for all transactions are provided in Department and Banking and Finance Rule Chapter 80-5-1.

(7) A Georgia bank holding company for the purposes of this Chapter shall be defined as in Code Section [7-1-621](#).

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Initial Registration of Bank Holding Companies Existing on July 1, 1976" was filed on June 8, 1976; effective June 28, 1976.

**Amended:** Rule repealed. Filed July 13, 1981; effective August 2, 1981.

**Amended:** New Rule entitled "Holding Companies, Generally" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. Jul. 12, 1999; eff. Aug. 1, 1999.

**Amended:** F. Dec. 6, 1999; eff. Dec. 26, 1999.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** F. June 20, 2016; eff. July 10, 2016.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

## **80-6-1-.02 Regular Applications**

(1) A state bank must follow procedures and meet the criteria of the Federal Reserve Bank to become a financial holding company. No state application is necessary. Regular applications for permission to become a bank holding company as defined in O.C.G.A. § [7-1-605](#), or to acquire control of a banking subsidiary, or to continue to be a holding company after becoming a holding company under circumstances contemplated by Section [7-1-605](#) which are beyond the control of the company, shall be in letter form accompanied by the following exhibits:

- (a) A copy of any form or documents filed with the Board of Governors of the Federal Reserve System;
- (b) A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to registration under State and/or Federal Securities Laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with the applicable State and Federal Securities Laws and Regulations;
- (c) A draft copy of any proposed proxy statements or offering circulars or letters prepared in connection with the applicant's proposed bank acquisition;
- (d) A copy of the most recent independent audit, if any and if not already on file with the Department, of the applicant's books and records, performed by independent public accountants; and
- (e) Proof of publication of the notice described in Rule [80-6-1-.05](#), if notice is required.

(2) Applicants desiring expedited processing for formation of a one-bank holding company for an existing bank with no publication requirement must meet the qualifying criteria in Department of Banking and Finance Rule [80-6-1-.03](#), and submit a letter application describing the transaction and support for qualification under the Department's criteria. Completed applications will be processed in 30 days.

(3) Regular applications for permission for a holding company to acquire shares of stock in a bank including a savings bank or savings and loan association which will result in the holding company having direct or indirect control of five (5) percent to twenty-five (25) percent of the voting shares of the acquired bank shall be in letter form accompanied by the following exhibits:

- (a) Material requested in subparagraphs (a) through (e) of Paragraph (1) of this Rule.

(4) Interstate and intrastate holding company acquisitions requiring approval may qualify for expedited processing. A letter form application describing the transaction shall be filed together with support for qualification under the Department's criteria and a copy of the federal form or documents. Publication may be done according to Department of Banking and Finance Rule [80-6-1-.05](#) or in conjunction with the federally required notice, provided the reference to the Department of Banking and Finance is included as provided in the notice regulation, Rule [80-6-1-.05](#).

(5) Regular applications for permission for a holding company or a subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank, or to merge two or more holding companies, shall be in letter form accompanied by the following exhibits:

- (a) Material requested in paragraphs (a) through (e) of Paragraph (1) of this Rule.

(6) Expedited processing for acquisitions or mergers described in Paragraph (5) of this rule is available to qualifying institutions under the same terms as in Paragraph (4).

(7) Expedited processing may be allowed for a qualifying bank holding company lawfully owning a bank or branch office in Georgia, to form a de novo bank. The procedure is outlined in the Applications Manual.

(8) No application filed pursuant to Paragraphs (3), (5) or (7) of this Rule shall request approval to acquire shares of more than one bank. In general, applications will be considered by the Department in order of receipt; simultaneous applications by a single applicant will be considered in the order requested by the applicant. No application filed pursuant to Paragraph (5) of this Rule shall request approval of more than one merger or acquisition.

(9) Final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this Rule, marked to indicate changes from the preliminary materials filed pursuant to Paragraphs (1)(c), (3)(b) and (5)(b) of this Rule, shall be filed with the Department prior to the actual transmission thereof to the shareholders. The Department may, in the event changes in such materials necessitate additional review, require that transmission to shareholders be delayed until such time as its review shall have been completed. This section shall not be applicable to an application which is subject to registration under the provisions of The Securities Act of 1933, as amended, or the Georgia Uniform Securities Act of 2008, as amended.

(10) Approval of an application filed pursuant to this Rule shall be valid for a period of twelve (12) months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended by the Department.

(11) Any material additions or changes in the method of acquisition by purchase or formation or in the representations set forth in an application must be approved by the Department, and could delay processing. The Department may examine, investigate, and evaluate facts related to any filing as necessary to reach an informed decision.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Applications" adopted. F. June 8, 1976; eff. June 28, 1976.

**Amended:** F. Dec. 3, 1980; eff. Jan. 2, 1981, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. Aug. 26, 1997; eff. Sept. 15, 1997.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. July 12, 1999; eff. Aug. 1, 1999.

**Amended:** F. Dec. 18, 2000; eff. Jan. 7, 2001.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** New title, "Regular Applications." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.03 Qualifying Criteria for Expedited Processing: Acquisitions and One-bank Holding Company Formations**

(1) The qualifying criteria for a bank holding company to be eligible for expedited processing for an acquisition is as follows:

(a) Well-capitalized organization.

1. Bank holding company (BHC). Both at the time of and immediately after the proposed transaction, the acquiring BHC is well capitalized.

2. Insured depository institutions. Both at the time of and immediately after the proposed transaction.

(i) The lead insured depository institution of the acquiring BHC is well capitalized;

(ii) Well-capitalized insured depository institutions control at least eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the acquiring BHC; and

(iii) No insured depository institution controlled by the acquiring BHC is undercapitalized.

3. Well capitalized and undercapitalized shall be as defined in the appropriate capital regulation and guidance of the applicable institution's primary federal regulator.

(b) Well-managed organization.

1. Satisfactory examination ratings. At the time of the transaction, the acquiring BHC, its lead insured depository institution, and insured depository institutions that control eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the BHC are well managed as defined by the Board of Governors of the Federal Reserve System, and have received "satisfactory" or better composite ratings at the most recent examination.

2. No poorly managed institutions. No insured depository institution controlled by the acquiring BHC has received one of the two lowest composite ratings at the institution's most recent examination or subsequent review by the state or appropriate federal banking agency for the institution.

3. Recently acquired institutions excluded. Any insured depository institution that has been acquired by the BHC during the 12 month period preceding the date on which written notice is filed may be excluded from the preceding paragraph if:

(i) The BHC has developed a plan acceptable to the Department for the institution to restore the capital and management of the institution; and

(ii) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than ten (10) percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the BHC.

(c) Convenience and needs criteria.

1. Effect on the community. The record indicates that the proposed transaction would meet the convenience and needs of the community standard in O.C.G.A. § [7-1-606\(b\)](#) or the BHC Act; and

2. Established CRA performance record. At the time of the transaction, the lead insured depository institution of the acquiring BHC and insured depository institutions that control at least eighty (80) percent of the total risk-weighted assets of insured institutions controlled by the BHC have received a satisfactory or better composite rating at the most recent CRA examination.

(d) Public comment. No comment that is timely and substantive in response to any notice of a transaction is received by the Department or is made known to it by any other regulatory agency, other than a comment that supports approval of the proposal.

(e) Competitive criteria. Without regard to any divestitures proposed by the acquiring BHC, the acquisition does not cause:

1. Insured depository institutions controlled by the acquiring BHC to control in excess of thirty-five (35) percent of market deposits in any relevant banking market; or
2. The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800.
3. Any state or federal agency with authority to find that the consummation of the transaction is likely to have a significant adverse effect on competition in any relevant banking market.

(f) Size of acquisition.

1. Limited growth. Except as provided below, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring BHC in all other qualifying transactions does not exceed thirty-five (35) percent of the consolidated risk-weighted assets of the acquiring BHC. For purposes of this paragraph "other qualifying transactions" means any transaction approved under 12 CFR [Section 225.14](#) or [12 CFR Section 225.23](#) during the 12 months prior to filing the notice; and
2. Individual size limitation. The total risk-weighted assets to be acquired do not exceed \$7.5 billion;
3. Small bank holding companies. The limited growth section shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring BHC are less than \$300 million.

(g) Supervisory Actions. During the 12 month period ending on the date on which the BHC proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease-and-desist order, capital directive, prompt-corrective- action directive, asset-maintenance agreement or other formal enforcement action, is or was outstanding against the BHC or any depository institution subsidiary of the BHC, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending.

(h) Consummation of the transaction must not violate any provision of the Bank Holding Company Act.

(i) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;
2. Any material adverse comment is received by the Department;
3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
4. Any other good cause exists for denial or removal. In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

(2) The qualifying criteria for a one-bank holding company formation is as follows:

(a) The shareholder or shareholders who control at least 67 percent of the shares of the bank will control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law;

(b) No shareholder or group of shareholders acting in concert will, following the reorganization, own or control 10 percent or more of any class of voting shares of the BHC unless that shareholder or group of shareholders was

authorized by the Department and the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;

(c) The bank is adequately capitalized as defined in Section 38 of the Federal Deposit Insurance Act ([12 USC §1831o](#));

(d) The bank has received at least a composite "1" or "2" rating at its most recent examination, in the event that the bank was examined;

(e) At the time of the reorganization, neither the bank nor any of its officers, directors, or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate state or federal banking agency;

(f) The company demonstrates that any debt that it incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a pro forma basis;

(g) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(h) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;
2. Any material adverse comment is received by the Department;
3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
4. Any other good cause exists for denial or removal. In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.03

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Public Notices" adopted. F. June 8, 1976; eff. June 28, 1976.

**Repealed:** New Rule of the same title adopted. F. Dec. 3, 1980; eff. Jan. 2, 1981, as specified by the Agency.

**Amended:** F. June 28, 1984; eff. Aug. 1, 1984, as specified by the Agency.

**Repealed:** New Rule of the same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. July 12, 1999; eff. Aug. 1, 1999.

**Amended:** New title, "Qualifying Criteria for Expedited Processing: Acquisitions and One-bank Holding Company Formations." F. Dec. 16, 2021; eff. Jan. 5, 2022.

## **80-6-1-.04 Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia**

(1) Only a holding company which has lawfully purchased or acquired a bank in Georgia may qualify under this Rule to form a de novo bank, pursuant to provisions of Code Section [7-1-608\(b\)\(3\)](#). The holding company must wholly own the proposed bank to qualify for expedited processing.

(2) An eligible holding company must have:

(a) An assigned composite rating of 2 or better at its most recent state or federal examination; and

(b) At least seventy-five (75) percent of its consolidated depository institution assets comprised of eligible depository institutions.

(3) An eligible depository institution, for the purposes of this Rule, shall be one that:

(a) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(b) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to such examination;

(c) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(d) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(e) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(4) An application may be removed from expedited processing for reasons including the following:

(a) Safety and soundness concerns of the Department dictate a more comprehensive review;

(b) Any material adverse comment is received by the Department;

(c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;

(d) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation; or

(e) Any other good cause exists for denial or removal.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.04

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-606](#), [7-1-607](#), [7-1-608](#).

**HISTORY:** Original Rule entitled "Audits" adopted. F. June 8, 1976; eff. June 28, 1976.

**Amended:** F. Dec. 3, 1980; eff. Jan. 2, 1981, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Jan. 8, 2021; eff. Jan. 28, 2021.

**Amended:** New title, "Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.05 Public Notices**

(1) The applicant shall publish not more than thirty (30) days prior to filing the application the following notice in a newspaper of general circulation in the county where the bank or holding company to be acquired is located:

#### **NOTICE OF PROPOSED ACQUISITION OR MERGER BY A COMPANY OR A HOLDING COMPANY**

Pursuant to the Official Code of Georgia and regulations of the Department of Banking and Finance, notice is given that (name of company in boldface type), (city and state of principal place of business), (a holding company) (company), proposes to (acquire shares of) (merge with) (name of bank or holding company), (city and state of principal place of business), and has applied to the Department of Banking and Finance for permission to take such actions.

Persons wishing to comment on this proposal should submit their views in writing within thirty (30) days of the date of publication of this notice to the Department of Banking and Finance, (insert address).

(2) Where an application for a de novo bank is made by a qualified holding company, a charter application notice for public comment will be required in such form as the Department may prescribe.

(3) In lieu of the foregoing, such publication may be in a form and location prescribed by the Federal Reserve Bank or other Regulatory Authority having concurrent jurisdiction, for such a transaction, provided it contains a reference to the Department of Banking and Finance with its address, as a regulator to whom comments should be sent.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.05

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Reports" was filed on June 8, 1976; effective June 28, 1976.

**Amended:** Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.

**Amended:** Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** New title, "Public Notices." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.06 Public Information**

Unless otherwise indicated in the instructions, applications, annual reports and registration statements filed with the Department or requested by applicants or registrants, submitted to the Department in connection with such filings shall be public information, subject to Rule [80-1-11-.01](#). Requests for confidential treatment shall be subject to review by the Department. Comments received pursuant to Rule [80-6-1-.05](#) shall be public information.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.06

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Non-Banking Acquisitions" was filed on June 8, 1976; effective June 28, 1976.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** New title, "Public Information." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.07 Hearings**

(1) Notwithstanding the provisions of Rule [80-6-1-.05](#), the Commissioner may, in his discretion, require public hearings to be held with respect to an application pending before him. Such hearings shall be held in accordance with the provisions of Rule [80-1-1-.05](#).

(2) Whenever the Commissioner, in his/her discretion, has reason to believe that a company directly or indirectly exercises a controlling influence over the management or policies of a bank or another company, the Commissioner shall cause reasonable notice to be given to the banks or companies involved to show cause why such company should not be found to be a holding company as defined in O.C.G.A. § [7-1-605](#) at a hearing to be held at such time and place as shall be specified in the notice. The form of the heretofore required notice and hearings shall be in accordance with the Georgia Administrative Procedures Act.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.07

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956, as amended" was filed on June 8, 1976; effective June 28, 1976.

**Repealed:** New Rule entitled "Georgia Holding Companies not Covered by Federal Bank Holding Company Act of 1956, as Amended" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** New title, "Hearings." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.08 Proxies, Offering Circulars, Disclosure Statements**

(1) It shall be a basis for denial of an application for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive or manipulative acts or practices in connection with any offer to purchase or exchange shares of stock in a bank or a holding company which is the subject of an application hereunder.

(2) No Georgia bank holding company or holding company owning a Georgia bank shall offer to purchase or exchange any stock of any banking subsidiary, either directly or indirectly, unless such offer is accompanied by an offering statement prepared in accordance with standards prescribed for securities required to be registered under The Georgia Securities Act of 2008, as amended. Purchases or exchanges of stocks which are subject to the registration requirements of The Securities Act of 1933, as amended (federal), or The Georgia Securities Act of 2008, as amended, or non-registered securities being acquired by a holding company whose securities are subject to registration under such acts, shall comply with the requirements under those acts.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.08

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Public Information" was filed on June 8, 1976; effective June 28, 1976.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** New title, "Proxies, Offering Circulars, Disclosure Statements." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.09 Non-Banking Acquisitions**

(1) Whenever a Georgia bank holding company or a holding company owning a Georgia bank plans to engage in, or to acquire shares of stock in a company to be or which is currently engaged in, non-banking activities, the Department shall be notified of such intentions within ten (10) days of the filing of any application with the Federal Reserve System for approval to engage in such activities or acquire such shares or, in the event such approval is not required, within ten (10) days after the Board of Directors of the holding company authorizes such specific activities or acquisition or, in lieu thereof, ten (10) days after any notice of engagement in such activities or acquisitions is filed with the Federal Reserve.

(2) Notice to the Department required pursuant to Section (1) of this Rule shall be in letter form and, insofar as is known at the time, shall state the following:

(a) Name and principal location of the company to be acquired, if any;

(b) Number of shares to be acquired, percentage of shares to be acquired to total shares outstanding, and price to be paid for such shares;

(c) Sources of funds to be used to pay for such shares and, if borrowed funds are to be used, the terms of any borrowings;

(d) Statement of Assets and Liabilities and Statement of Income for the most recent fiscal year and year-to-date on the company to be acquired or to otherwise be engaged in non-banking activities;

(e) Nature of business in which company is engaged or is to be engaged; and

(f) Description of additional markets to be served and additional nonbanking activities to be performed.

(3) In the event a notice to the Federal Reserve is required, a bank holding company may provide only a copy of that notice to the Department in lieu of paragraph 2.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-1-.09

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Hearings" was filed on June 8, 1976; effective June 28, 1976.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** New title, "Non-Banking Acquisitions." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.10 Unlawful Acquisitions, Corporate Restructuring**

Transactions determined by the Commissioner to in substance constitute an internal corporate restructuring by a Georgia bank holding company shall not be considered to be an acquisition of control within the meaning of O.C.G.A. § [7-1-608](#).

Cite as Ga. Comp. R. & Regs. R. 80-6-1-10

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Proxies, Offering Circulars, Disclosure Statements" was filed on December 3, 1980; effective January 2, 1981, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Amended:** F. June 20, 2016; eff. July 10, 2016.

**Amended:** New title, "Unlawful Acquisitions, Corporate Restructuring." F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-12 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-6-1-12

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Liability Funding of Corporate Activities" was filed on June 28, 1984; effective August 1, 1984, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Note:** Correction of non-substantive typographical error in Rule by deletion of "No" from the rule title as requested by the agency. Effective Effective Aug. 12, 2015.

**Note:** Correction of non-substantive typographical error, "Note" effective Aug. 12, 2015 revised to include "*...and addition of "No" at the beginning of the paragraph...*" Effective Sep. 1, 2015.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-13 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-6-1-13

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Combination Bank and Thrift Holding Companies-Branching" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

**Repealed:** F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Amended:** New Rule entitled "Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formations" adopted. F. July 14, 1998; eff. Aug. 3, 1998.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.14 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.14

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Unlawful Acquisitions, Corporate Restructuring" adopted. F. Sept. 26, 1995; eff. Oct. 16, 1995.

**Amended:** F. July 14, 1998; eff. Aug. 3, 1998.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-1-.16 Repealed and Reserved**

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.16

**AUTHORITY:** O.C.G.A. § [7-1-61](#).

**HISTORY:** Original Rule entitled "Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank. Subsidiary By a Holding Company Lawfully Operating in Georgia." F. July 12, 1999; eff. Aug. 1, 1999.

**Amended:** F. June 15, 2015; eff. July 5, 2015.

**Amended:** F. June 20, 2016; eff. July 10, 2016.

**Repealed:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-6. HOLDING COMPANIES

### Subject 80-6-2. OPERATIONS

#### 80-6-2-.01 Audits

(1) Every Georgia bank holding company or a holding company that owns a Georgia bank and its non-banking subsidiaries shall be audited at least annually by independent public accountants in accordance with generally accepted auditing standards with copies of such audit maintained on file in the offices of the holding company.

(2) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the holding company. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

**Cite as** Ga. Comp. R. & Regs. R. 80-6-2-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#); [7-1-607](#).

**HISTORY:** Original Rule entitled "Audits" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

#### 80-6-2-.02 Reports

(1) On or before the date of the annual stockholders' meeting of a Georgia bank holding company or a holding company owning a Georgia bank, the shareholders of the holding company, regardless of class or voting rights, shall be provided a copy of the audit report required in Rule 80-6-2-.01, or the following schedules prepared on the equity basis of accounting for the last fiscal year on a comparative basis with the preceding fiscal year:

- (a) Year-end balance sheet on both a consolidated basis and a holding company only basis;
- (b) Statement of income and expenses on both a consolidated and a holding company only basis;
- (c) Reconcilement of changes in capital accounts on both a consolidated and a holding company only basis; and
- (d) A statement of cash flows (holding company only).

(2) Changes in control of voting shares of a Georgia bank holding company or a holding company owning a Georgia bank shall be reported to the Department in the same manner as changes in control of bank shares pursuant to O.C.G.A. § [7-1-236](#) and Rule [80-1-6-.01](#).

(3) Failure to file required reports on a timely basis shall subject the holding company to the penalties imposed by O.C.G.A. § [7-1-68](#).

(4) Notwithstanding the provisions of Paragraph (1), any company complying with the financial disclosure requirements promulgated by the Securities and Exchange Commission shall be deemed to have complied with Paragraph (1).

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.02

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Reports" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-2-.03 Liability Funding of Corporate Activities**

No Georgia bank holding company or holding company owning a Georgia bank may enter into contractual debt obligations which in the aggregate are dependent upon revenues produced by subsidiaries for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of such subsidiaries for the three fiscal years immediately preceding the date of the extension of credit. The Department, upon specific written request of the holding company, may waive this requirement.

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.03

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Liability Funding of Corporate Activities" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

### **80-6-2-.04 Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956**

Companies determined to be holding companies pursuant to O.C.G.A. § [7-1-605](#), but not subject to the Federal Bank Holding Company Act of 1956, as amended, are required to file all reports and applications required by Rule Chapter 80-6-1 and Rule Chapter 80-6-2 notwithstanding such federal exemptions.

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.04

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-607](#).

**HISTORY:** Original Rule entitled "Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 80. RULES OF DEPARTMENT OF BANKING AND FINANCE

## Chapter 80-9. SUSPICIOUS ACTIVITIES: BANKS

### Subject 80-9-1. CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITIES: BANKS

#### 80-9-1-.01 State Requirements

(1) A financial institution required to report any currency transaction in excess of \$10,000 including a transaction in excess of \$100,000 may satisfy state currency transaction filing and reporting requirements by filing a timely report (FinCEN Form 104) with the federal authority designated in the Currency and Foreign Transaction Reporting Act of 1970 ("Bank Secrecy Act").

(2) Banks and credit unions are required to follow federal guidelines for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting.

**Cite as** Ga. Comp. R. & Regs. R. 80-9-1-.01

**AUTHORITY:** O.C.G.A. §§ [7-1-61](#), [7-1-689](#), [7-1-706](#).

**HISTORY:** Original Rule entitled "Application of Reporting Requirements" adopted. F. July 24, 1986; eff. Sept. 1, 1986, as specified by the Agency.

**Repealed:** F. Sept. 4, 1990; eff. Sept. 24, 1990.

**Amended:** New Rule entitled "State Requirements" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1987.

**Amended:** F. Aug. 22, 2006; eff. Sept. 11, 2006.

**Amended:** F. Jun. 10, 2014; eff. Jun. 30, 2014.

**Amended:** F. Dec. 16, 2021; eff. Jan. 5, 2022.

# Department 82. DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES

## Chapter 82-5. PATIENT'S RIGHT

### Subject 82-5-1. PATIENT'S RIGHT

#### 82-5-1-.01 Legal Authority

These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Title 37, Chapters 3, 4, and 7.

Cite as Ga. Comp. R. & Regs. R. 82-5-1-.01

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#).

**HISTORY:** Original Rule entitled "Legal Authority" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

#### 82-5-1-.02 Purpose, Implementation, and Definitions

(1) **Purpose.** The Purpose of these regulations is to safeguard the rights of persons treated pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Chapters 37-3, 37-4 and 37-7.

(2) **Applicability.** These regulations set forth rights of individuals served in hospitals and intermediate care facilities for individuals with intellectual disabilities that are owned and operated by the Department.

(a) When the individual is a minor or an adult with a legally appointed guardian, the regulations are applicable to that person with certain exceptions as specifically stated in various parts of the regulations. These variations are noted in the text of the regulations.

(b) For persons being served by virtue of a court order related to a criminal matter, the regulations are applicable to the extent that they do not violate or conflict with the provisions of the order or the need to provide for the safety of the individual or of others.

(3) **Implementation.** Each facility shall instruct each staff member in the contents of these regulations. Each facility also, at the beginning of each individual's treatment, shall notify the individual or the individual's parent or guardian, if applicable, of the rights and remedies contained in these regulations and of their applicability to the individual. Notifications shall be done in a manner commensurate with the individual's abilities and capabilities of comprehension and understanding.

(4) **Definitions.** Unless a different meaning is required by the context, the following terms used in these regulations shall have the meanings hereinafter set forth:

(a) "Chief Medical Officer" means the physician designated by the chief administrative officer of the facility with overall responsibility for individual treatment at any facility receiving individuals pursuant to O.C.G.A. Chapters 37-3 or 37-7, or their designee. Where individuals are receiving treatment under the provisions of O.C.G.A. Chapter 37-4, this term shall include the term "Regional Hospital Administrator" when applicable.

(b) "Court," with the exception of references in these regulations to courts presiding over criminal cases in which an individual has been found incompetent to stand trial or not guilty by reason of insanity, means, in the case of an individual who is 17 years of age or older, the probate court for the county of residence of the individual or the

county in which such individual is found. In the case of an individual who is under the age 17 years, it means the juvenile court for the county of residence of the individual or the county in which such individual is found.

(c) "Department" means the Georgia Department of Behavioral Health and Developmental Disabilities and includes its duly authorized agents and designees.

(d) "Facility" means any State-owned or State-operated Hospital and any State-owned or State-operated Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

(e) "Guardian" means a person appointed by a Court under O.C.G.A. Title 29 to act on behalf of an individual who has been judicially determined to lack sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety.

(f) "Individual" means any person with mental illness who receives treatment in a facility pursuant to O.C.G.A. Chapter 37-3 and any person with a substance use disorder who receives treatment in a facility pursuant to O.C.G.A. Chapter 37-7. It also includes any person with an intellectual or developmental disability who receives habilitation in a facility pursuant to O.C.G.A. Chapter 37-4. "Individual" also includes a person for whom treatment or habilitation is sought. "Individual" also includes those who receive such services pursuant to a Court Order in a criminal case, including persons who are committed to a facility after having been found incompetent to stand trial or not guilty by reason of insanity.

(g) "Individualized service plan" (ISP; also referred to as "Individual Recovery Plan" or IRP) means a plan that is developed during an individual's stay in a facility, and that includes specific elements based on the reason for the individual's stay, as follows:

1. If the individual's stay in the facility is pursuant to O.C.G.A. Chapter 37-3 (i.e. related to mental illness as contemplated by that Chapter) or Chapter 37-7 (i.e. related to substance use as contemplated by that Chapter), the ISP must be specifically tailored to the individual's treatment needs, and shall clearly include the following:

(i) A statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;

(ii) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include a specific prognosis for achieving these goals;

(iii) Identification of the types of professional personnel who will carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under State and Federal law;

(iv) Documentation of the individual's involvement and, if applicable, the individual's acceptance of and/or adherence to the service plan; and

(v) A statement attesting that the chief medical officer or Regional Hospital Administrator, or that person's designee if such designee is a physician appointed in writing, has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive available environment possible, closest to the individual's home community.

2. The ISP also includes the corresponding individualized program plan for an individual's stay in a facility pursuant to O.C.G.A. Chapter 37-4 (i.e. related to habilitation for intellectual/developmental disabilities as contemplated by that Chapter). Such an ISP shall be updated on a continuing basis, and shall include, at a minimum, the following elements:

(i) A statement of the nature of the specific problems and the specific needs of the individual;

(ii) A statement of the least restrictive setting available and conditions necessary to achieve the purposes of habilitation based upon the needs of the individual;

- (iii) A description of intermediate and long-range goals with the projected timetable for their attainment;
  - (iv) A description of the proposed program, facility, or department(s) responsible for involvement with the individual to attain these goals;
  - (v) An explanation of criteria for acceptance or rejection of other alternative settings for habilitation; and
  - (vi) Proposed criteria for release to less restrictive settings for habilitation.
- (h) "Intermediate Care Facility for Individuals with Intellectual Disabilities" means a facility in which only individuals served pursuant to O.C.G.A. Chapter 37-4 are served.
- (i) "Physician" means any person duly authorized to practice medicine in this State pursuant to O.C.G.A. Chapter 43-34 and, unless otherwise noted in these regulations, an Advanced Practice Registered Nurse or Physician Assistant practicing under the direction or supervision of a practicing Physician.
- (j) "Regional Hospital Administrator" means the chief administrative officer who has overall management responsibility at any facility receiving individuals pursuant to O.C.G.A. Chapters 37-3, 37-4, and 37-7, or an individual appointed as the designee of such Regional Hospital Administrator.
- (k) "Representative" means the person appointed pursuant to O.C.G.A. Title 37, Chapters 37-3, 37-4, or 37-7 to receive notices and perform other actions authorized by O.C.G.A. Title 37, Chapters 3, 4, and 7.
- (l) "Staff member" or "staff" means any person who is an employee, independent contractor, or other agent of the Department or of a facility. The use of "staff member" in these regulations for such persons shall in no way alter the legal relationship between such persons and the Department or subject the Department to any liability to which it is not otherwise subject.
- (m) "Treatment" means care; diagnostic services; therapeutic services, including the administration of medications; and any other service for the treatment or habilitation of an individual. It includes such services, as well as social service care, vocational rehabilitation, and career counseling. It also includes habilitation of an individual pursuant to O.C.G.A. Chapter 37-4.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.02

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-1](#), [37-4-2](#), [37-7-1](#).

**HISTORY:** Original Rule entitled "Purpose, Implementation and Definitions" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-5-1-.03 Treatment**

#### **(1) Appropriateness.**

(a) General. Each individual shall receive care and treatment that is suited to the individual's needs in the least restrictive environment available offering appropriate care and treatment.

(b) Individual Service Plans.

1. The examination of individuals shall be governed as follows:

(i) For individuals being treated pursuant to O.C.G.A. Chapters 37-7 and 37-3, each individual shall be assessed by the staff as soon as possible after admission, but within the time limits contained within O.C.G.A. Chapters 37-7 and 37-3, or 48 hours, whichever comes first;

(ii) Admissions to facilities may no longer take place under O.C.G.A. Chapter 37-4.

2. The development of an individualized service plan shall be governed as follows:

(i) For persons being treated in a hospital pursuant to O.C.G.A. Chapters 37-7 and 37-3, staff shall develop an individualized service plan for each individual as soon after the initial assessment as practicable, but within the time limits contained within O.C.G.A. Chapters 37-7 and 37-3 or 10 days, whichever comes first;

(ii) Admissions to facilities may no longer take place under O.C.G.A. Chapter 37-4.

3. Each individualized service plan shall be reviewed at regular intervals to determine the individual's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the individual's present condition. These reviews should be based upon relevant progress notes in the individual's clinical record and upon other related information. Information from the individual and other sources, including family members, should be obtained and utilized where feasible. Reviews should be conducted as required by applicable standards such as those required by Medicare, Medicaid, and the Joint Commission.

(c) Physical Restraints, and Seclusion.

1. Seclusion may not be used with individuals who are served by a DBHDD ICF/IID facility. Use of physical restraints in a DBHDD ICF/IID must comply with the requirements of the State Operations Manual of the Centers for Medicare and Medicaid Services, Appendix J; relevant federal regulations; and O.C.G.A. § [37-4-124](#).

2. Other use of seclusion or restraint under these regulations shall only be accomplished in a manner that complies with the requirements of the State Operations Manual of the Centers for Medicare and Medicaid Services, Appendix A; relevant federal regulations; O.C.G.A. § [37-3-165](#); and O.C.G.A. § [37-7-165](#).

3. "Time-out" means a situation in which an individual is placed in a room from which egress is prevented. This definition applies only for an individual admitted pursuant to Chapter 37-4. A time-out is permitted only if all of the following conditions are met:

(i) the placement is a part of an approved systematic time-out (emergency placement of an individual into a time-out room is not allowed under these regulations); and

(ii) the individual is under the direct, constant visual supervision of designated staff; and

(iii) the door to the room is held shut by staff, or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

4. The Department shall establish and maintain policies that set forth the manner in which Department staff will comply with these requirements.

(2) Participation of Individual.

(a) Access to information. Each individual and the individual's guardian (if applicable and not prohibited by law), or in the case of a minor individual the individual and the individual's parent(s) (unless prohibited by law), shall:

1. have the right to review the individual's own medical records subject to conditions in § 82-5-1-.06(3) of these regulations, the right to be told their diagnosis, and the right to be consulted and informed about the treatment recommendation and any risk involved;

2. have the right to be fully informed about the individual's medication, including its side effects and available treatment alternatives; such disclosures shall be made unless the disclosure to the individual is determined by the chief medical officer, the Regional Hospital Administrator, or the individual's treating physician to be detrimental to the individual's physical or mental health and unless a notation to that effect is made part of the individual's record; and

3. have the right to be so informed about matters related to the individual's treatment or habilitation, as required or allowed under these regulations, to the fullest extent possible in a manner that is commensurate with the individual's, guardian's, and/or parent's abilities of comprehension and understanding; such information shall not be withheld from a guardian or parent of a minor child in cases in which disclosure is to be made to that person.

(b) Consent to Medical Treatment and Involuntary Administration of Psychotropic Medication. The Department shall recognize the personal physical integrity of all individuals and their rights to consent to or refuse medical treatment.

1. No treatment of any kind shall be administered by the Department to an individual if that individual refuses the treatment prior to the treatment, except that:

(i) Psychotropic medication may be administered without the consent of the individual or other person where a physician determines that refusal would be unsafe to the individual or others. If the individual continues to refuse medication after such initial emergency treatment, a concurring opinion from a second physician must be obtained before medication can be continued without the individual's consent. Additionally:

(I) All psychotropic medications shall be used solely for the purposes of providing effective treatment and protecting the safety of the individual and other persons and shall not be used as punishment or for the convenience of staff; and

(II) The Department shall establish and maintain policies that set forth the manner in which Department staff may administer psychotropic medication in compliance with state and federal law in cases where and individual does not consent to administration of such medication.

(ii) For an adult individual who has been judicially determined to be incompetent to give consent or make decisions of a similar nature, consent for treatment shall be obtained from the individual's guardian with capacity to make such decisions, provided the individual does not refuse to consent to medical treatment; however, nothing in this subsection should be construed as to abridge any rights of an individual 18 years of age or over to refuse to consent to medical treatment as to his own person. If the individual is a minor, consent shall be obtained from the minor's parent or guardian.

(iii) In the absence of a guardian of an adult, if there is a determination in the medical record by a licensed physician after the physician has personally examined an adult that the adult lacks sufficient understanding or capacity to make significant responsible decisions regarding his or her medical treatment or the ability to communicate by any means such decisions, consent shall be obtained from a surrogate who is authorized under Georgia law to consent to such treatment.

(iv) When treatment is being provided by an outside provider, the responsibility for determining capacity of the individual to consent, and subsequently obtaining consent, lies with the outside provider.

(v) When the treatment for which consent is sought is not standard psychiatric treatment, the consent obtained from the persons listed in this section shall not be sufficient to authorize the treatment unless court approval is also obtained after a hearing. Standard psychiatric treatment shall not include insulin coma or psychosurgery.

(vi) In cases of grave emergency where the medical staff of the facility determines that immediate surgical or other intervention is necessary to prevent serious physical consequences or death, and where delay in obtaining consent would create a grave danger to the physical health of the individual as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the individual or other person. In such cases, a record of the determination of the physicians shall be entered into the medical records of the individual and this will be the prior consent for such surgery or other intervention. Such consent shall be valid notwithstanding the type of admission of the individual, and it shall also be valid whether the individual has been adjudicated incapacitated pursuant to O.C.G.A Title 29. Actual notice of any action taken pursuant to this section shall be given to the individual and the spouse, next of kin, attorney, guardian, or representative of the individual as soon as practicable.

(3) Participation of Representative.

(a) Two representatives shall be appointed for each individual whose rights are the subject of these regulations. If two representatives cannot be located, a guardian ad litem shall be requested from the Court by the relevant facility. Appointments shall be made in accordance with Rule .07 of this Chapter.

(b) The Department shall establish and maintain policies that set forth the rights and responsibilities of representatives and of individuals with regard to their representatives in a manner that complies with O.C.G.A. Title 37, Chapters 3, 4, and 7.

(4) Private Physician.

(a) If an individual is able to secure the services of a private physician who is not on the medical staff of the facility, the individual shall have the right to have that physician visit the individual at the inpatient facility. The individual or the individual's guardian, parent, or other surrogate, if applicable, shall sign a written form indicating the name, telephone, and address of the private physician and requesting that the physician be allowed to make such visits. Thereafter, the private physician shall be allowed to visit the individual at the inpatient facility at any reasonable time, and subject only to other reasonable regulations. The staff shall require the private physician to produce proper identification and proof of current certification as a physician upon the initial visit and thereafter as necessary. The private physician shall be provided a private area in which to examine and consult with the individual. Upon the individual's written authorization, the private physician shall be allowed to examine the individual's clinical record.

(b) As such an examination by a private clinician is required by law, a private clinician who examines an individual in a facility of the Department under this provision is not required to be credentialed by the facility where the examination takes place.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.03

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-43](#), [37-7-43](#), [37-3-85](#), [37-4-44](#), [37-7-85](#), [37-4-124](#), [37-3-165](#), [37-7-165](#), [37-3-162](#), [37-4-122](#), [37-7-162](#), [37-3-167](#), [37-4-126](#), [37-7-167](#), [37-3-163](#), [37-4-123](#), [37-7-163](#), [31-9-1](#) et seq., [37-3-147](#), [37-4-107](#), [37-7-147](#).

**HISTORY:** Original Rule entitled "Treatment" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **82-5-1-.04 Treatment Environment**

### **(1) General.**

(a) The dignity of each individual shall be respected at all times and upon all occasions, including any occasion on which the individual is taken into custody, detained, or transported. Except where required under conditions of extreme urgency, those procedures, facilities, vehicles and restraining devices normally used for criminals or those accused of crime shall not be used in connection with individual, to the extent that this is under the Department's control.

### **(2) Abuse, Neglect, and Sexual Activity.**

(a) Abuse or neglect of any individual is prohibited. A staff member may use only such force as is necessary to restrain and secure an individual threatening imminent harm, or committing harm, to himself or others, and may use only such force as is necessary to prevent an involuntary individual from leaving a facility. Such necessary force shall not constitute abuse. For the purpose of this section, an involuntary individual is one who is being treated involuntarily, or who is being examined or evaluated to determine the need for involuntary treatment, or who is the subject of a petition and certificate seeking involuntary treatment.

(b) No staff member shall engage in any sort of sexual activity with any individual.

(c) The Department shall establish and maintain policies requiring incident management. All incidents are to be immediately reported in accordance with Department policy by staff who witness an incident of abuse or sexual activity. A staff member who fails to comply with the applicable requirements of this Section shall be subject to adverse action in accordance with personnel procedures of the Department or the governing authority.

### (3) Personal Effects.

(a) An individual's right to the individual's personal effects shall be respected. Each individual admitted to or treated in a facility must be provided with individual storage space for the individual's belongings as space permits. An individual's right to retain the individual's personal property may be restricted for the following reasons:

1. To protect the health or safety of the individual or others;
2. To prevent the individual from using an item that would interfere with the orderly operation of the facility;
3. To protect the individual's valuable property when there is substantial risk that it will be lost or stolen; or
4. Where the property constitutes contraband.

(b) Each facility shall encourage and assist each individual to provide for the safekeeping of the individual's money in bank accounts, and the safekeeping of the individual's other valuables in safe places maintained by the facility.

(c) Whenever an individual's personal property is retained by the facility, a detailed notation listing the items retained by the facility shall be made in the individual's record. In addition, the individual shall be provided with a receipt if the individual so requests.

(d) At the time an individual is discharged, or as agreed to by the facility and the individual, all money and personal effects placed in the facility's custody shall be returned, except where possession of a certain item by an individual would be illegal.

(e) No staff member shall be responsible for the loss of or damage to an individual's property where reasonable efforts to assure the safety of that property have been made.

(f) An individual's personal effects may not be examined or searched after the individual's admission unless the individual (or the individual's guardian or parent, if applicable) consents to the search, or unless the chief medical officer or Regional Hospital Administrator, upon personal knowledge or information provided by staff members or other reliable persons, determines there is reasonable cause for believing the individual has an item or items that may be dangerous or whose possession is illegal. If a search is deemed necessary, the reasons for it must be recorded in the individual's record along with the date, time, and result of the search. The individual has a right to be present at any search and told the reason for the search, except when such search is deemed urgent for safety reasons and the individual or resident is not immediately available. Nothing in this section shall prevent the facility from making an inventory of items in the individual's possession at the time of their admission or from assisting the individual, as required by the individual's condition, in the care and upkeep of the individual's belongings. This section does not apply to locations in a facility where there is no reasonable expectation of privacy or upon return of an individual to a facility or to a unit of a facility.

### (4) Communications and Visits.

(a) Mail. Receiving and sending mail shall be governed as follows for individuals being treated on an inpatient basis in a hospital pursuant to O.C.G.A. Chapters 37-7, 37-3 and 37-4.

1. Each individual shall be allowed to receive and send sealed, unopened correspondence, and no individual's correspondence shall be opened, delayed, held or censored by the facility, except under the following conditions:

(i) If there are reasonable grounds to believe that incoming mail contains items or substances which may be dangerous to the individual or others, the chief medical officer or Regional Hospital Administrator may direct

reasonable examination of such mail and disposal of items or substances found therein. All writings must be presented to the individual within 24 hours of inspection. A requirement that an individual open a package or letter in the presence of staff does not, where staff do not read any writings contained in the package or letter, constitute an examination for purposes of this regulation.

(ii) The Chief Medical Officer or Regional Hospital Administrator may apply to the court for a temporary order to restrict outgoing mail. The court, upon a showing of probable cause that such mail is dangerous to the individual or others, may grant a temporary restriction of the individual's mail privileges, provided that within 5 days after the issuance of such temporary order, the court holds a hearing to determine whether an order of restriction for an extended time shall issue.

(I) In no event shall mail be restricted pursuant to such temporary order for more than 5 days.

(II) If the court determines the individual's outgoing mail is dangerous to the individual or others, it may order the mail restricted for a period not to exceed 30 days.

(III) The court order may be renewed as necessary for periods not to exceed 30 days, with a new hearing to take place each time.

(IV) The chief medical officer or Regional Hospital Administrator of the facility shall restrict communication as provided in the court order.

(iii) Any restriction of incoming or outgoing mail under this section shall not exceed a period of 5 days, except that such restriction may be renewed by the chief medical officer or Regional Hospital Administrator for a period not to exceed 5 days, provided that such renewal periods in the aggregate shall not exceed the period specified in the court order when outgoing mail is restricted pursuant to such order. Prior to a renewal, the chief medical officer or Regional Hospital Administrator shall make a new determination that such mail continues to be dangerous to the individual or others.

(iv) Correspondence of the individual with the individual's attorney shall not be restricted under this Section, nor shall correspondence to an individual from a public official be restricted under this section.

(v) Each time an individual's incoming or outgoing mail is examined, written notice of the examination, and notice of the right to a full and fair hearing within 5 days after a temporary court order, shall be served on the individual and the individual's representatives as provided in § 82-5-1-.07 of these regulations. An individual (other than an individual whose status is involuntary) may waive in writing such notice to the individual's representatives. In addition, the circumstances surrounding the examination of any mail shall be recorded in the individual's clinical record. Each facility shall maintain policies that encourage the individuals' exercise of the individual's communication rights, including supply to indigent individuals of writing materials and postage in reasonable amounts.

(b) Telephone calls.

1. Each individual has the right to make reasonable use of telephones. To assure this right, each facility shall:

(i) Maintain locations for calling (including pay telephones where feasible) which allow for privacy;

(ii) Supply indigent individuals with funds or access to telephones for making a reasonable number of calls; and

(iii) Prohibit any monitoring of individual calls without consent from the individual except pursuant to a court order. A requirement that staff dial a particular number for an individual does not constitute monitoring of an individual's calls for purposes of this regulation.

2. The facility may place reasonable restrictions, such as those relating to the distance, time, length, and frequency of calls, upon the use of telephones by all individuals generally. In addition, reasonable restrictions may be placed upon an individual's use of telephones under the following conditions:

(i) The restriction must be required by the type of seriousness of the individual's mental condition and must be ordered by the individual's attending physician;

(ii) The type and extent of the restriction, along with the specific reason for the restriction must be stated in the order; and

(iii) The order shall expire automatically 24 hours after it is given, unless it is terminated sooner, but additional 24-hour orders may be given according to the same procedure as that required for the original order.

3. The individual may consent in writing to restrictions to the use of the telephones.

4. Telephone communication of an individual with their attorney or private physician shall not be restricted in accordance with §§ 82-5-1-.04(4)(b)2(i), (iii).

(c) Visitation. Visitation shall be governed as follows for individuals being treated on an individual basis in a hospital pursuant to O.C.G.A. Chapters 37-7, 37-3, and 37-4.

1. Each individual admitted to a facility has the right to receive visitors daily or to refuse in writing to receive any visitors or particular visitors. Privacy, to the extent that it is possible, should be provided.

2. The facility may place reasonable restrictions, such as those relating to time and place, upon visitation by persons outside the facility for all individuals generally. Visiting hours shall be set for at least 4 hours daily, 2 hours of which shall be after 6 p.m. In addition, reasonable restrictions may be placed upon an individual's right of visitation under the following conditions:

(i) The restriction must be required by the type of seriousness of the individual's mental or physical condition and must be ordered by the individual's attending physician;

(ii) The type and extent of the restriction, along with the specific reasons for the restriction, must be stated in the order; and

(iii) The order shall expire automatically 24 hours after it is given, unless it is terminated sooner, but additional 24-hour orders may be given according to the same procedure as that required for the original order.

3. The individual may consent in writing to restrictions on visitation.

4. Visitation by an individual's attorney or private physician shall not be restricted in accordance with §§ 82-5-1-.04(4)(c)2(i), (iii).

5. The right to visitation does not establish the right to a visit by a person whose presence at the facility has been prohibited by the facility.

(d) Other.

1. Each individual admitted to a facility shall have the right to regular social interaction with others, including persons of the opposite sex, subject only to the provisions of § 82-5-1-.03(1)(c) of these regulations (seclusion) and to other reasonable regulations, such as those relating to time and place.

2. Each individual admitted to a facility shall have the right to attend religious services, but no individual may be compelled to attend such services. The individual should be assisted in the observance of the individual's religion to the extent possible.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.04

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-162](#), [37-4-122](#), [37-7-162](#), [37-3-160](#), [37-4-120](#), [37-7-160](#), [37-3-165](#), [37-4-124](#), [37-7-165](#), [37-3-143](#), [37-4-103](#), [37-7-143](#), [37-3-142](#), [37-4-102](#), [37-7-142](#).

**HISTORY:** Original Rule entitled "Treatment Environment" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-5-1-.05 Personal Affairs**

(1) **General.** No individual, whether voluntary or involuntary, shall be deprived of any civil, political, personal, or property rights or be considered legally incompetent for any purpose without due process of law. Hospital staff may exercise clinically-informed discretion in deciding whether to assist an individual in exercising these rights. These rights include, but are not limited to:

- (a) The right to dispose of property;
- (b) The right to execute legal instruments;
- (c) The right to make purchases;
- (d) The right to enter into contractual relationships;
- (e) The right to register and vote;
- (f) The right to marry and to obtain a separation, divorce, or annulment;
- (g) The right to hold a driver's license; and
- (h) The right to make a will.

(2) Legal Counsel.

(a) Each individual admitted to a facility has the right to secure legal counsel to represent the individual in the individual's personal affairs during the individual's hospitalization. The individual should be assisted by staff members to the extent possible in securing legal counsel.

1. If the individual can afford legal counsel, the individual may secure counsel at the individual's own expense.

2. If the individual needs legal counsel for the individual's personal affairs but cannot afford such counsel, the individual may contact the local legal aid service for assistance.

3. Each facility shall post on every treatment unit the name, address, and telephone number of local lawyer referral services and local agencies which provide legal services to indigent persons.

(b) The securing of legal counsel for an individual at hearings concerning the individual's committal or treatment is not governed by these regulations.

(c) Each individual admitted to a facility shall have the right to have the individual's legal counsel visit the individual at the facility. The individual (or the individual's guardian or parent, if applicable) or the attorney shall provide the facility with the attorney's name, telephone number, and address. The staff shall require the attorney to produce proper identification and proof of current certification as an attorney upon the initial visit and thereafter as necessary. The attorney shall be allowed to visit the individual at the facility at any reasonable time, and subject to other reasonable regulations. The attorney shall be provided a private area in which to consult with the individual.

(d) Upon the individual's written authorization, the attorney shall be allowed to examine the individual's clinical record and shall also be allowed to interview staff who have treated the individual. However, an attorney for matters relating to the individual's presence at the facility by virtue of Title 37 or by virtue of a Court Order in a criminal

case may view the individual's record during the period of the attorney's representation of the individual on such matters.

**(3) Voting.**

(a) Each individual admitted to a facility who is entitled to vote shall be given the right to vote in primary, special, and general elections and in referenda.

(b) The Regional Hospital Administrator of each facility, or their designee, shall:

1. At least 30 days prior to a national or statewide election, post notice of the election in each hospital treatment unit;
2. Notify individuals 18 years old and over of their right to register to vote, to obtain absentee ballots, and to cast ballots; and the notification shall be conducted to allow sufficient time for voter registration and acquisition of absentee ballots;
3. When clinically suitable and if staffing of the facility permits, allow residents to leave the premises to exercise voting privileges or to register to vote, and require personnel, where available, to accompany residents; otherwise voting by absentee ballot is sufficient;
4. Make arrangements with state and local officials to provide for voter registration and casting of ballots by interested individuals; and
5. Assist election officials in determining an individual's place of residence for voting purposes.

**(4) Employment Outside Facility.**

(a) Each facility shall encourage and assist an individual in securing suitable employment outside the facility, if the individual wishes to be so employed and if such employment will aid in the individual's treatment. The training of individuals for gainful employment shall also be encouraged through appropriate resources and referrals.

(b) All wages and benefits earned by employment outside the facility shall belong solely to the individual.

**(5) Attorney's Access.**

(a) An attorney representing an individual in a matter relating to the individual's hospitalization shall have the right to visit and consult with the individual at the facility in accordance with § 82-5-1-.05(2)(c) of these regulations.

(b) At reasonable times, and subject to the notification and identification provisions of § 82-5-1-.05(2)(c) of these regulations, the individual's attorney for hospitalization matters shall have the right to interview the physician and staff members who attended or are now attending the individual, and the right to have the individual's records interpreted by them.

(c) The chief medical officer or Regional Hospital Administrator of each facility shall establish reasonable policies to make available to the individual's attorney all information not otherwise privileged in the possession of the facility which the attorney requires to advise and represent the individual concerning matters relating to the individual's presence at the facility by virtue of O.C.G.A. Title 37 or by virtue of a court order in a criminal case.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.05

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-140](#), [37-4-100](#), [37-7-140](#), [37-3-141](#), [37-4-101](#), **37-7-141**, [37-3-166](#), [37-3-168](#), [37-4-125](#), [37-4-127](#), [37-7-166](#), [37-7-168](#), [37-3-144](#), [37-4-104](#), [37-7-144](#).

**HISTORY:** Original Rule entitled "Personal Affairs" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **82-5-1-.06 Clinical Records**

### **(1) Contents.**

(a) A clinical record shall be maintained at each facility for each individual treated at that facility, containing protected health information of the individual. The record shall contain information on all matters relating to the admission, care, treatment, discharge, and legal status of the individual, and shall include all medical and legal documents relating to the individual. The record shall not contain peer review or administrative documents such as incident reports and investigations of incidents or complaints. The record specifically shall contain at least the following: progress notes; documents describing or arising from the individual's history; the results of all psychiatric, psychological, and physical examinations; individualized service plans; evaluations other than evaluations developed at the direction of a court that is assessing an individual's competence or responsibility under O.C.G.A. Title 17, Chapter 7, which are not to be maintained in the medical record; orders for treatment; orders for physical restraints, seclusion, and other restrictions permitted by these regulations or other applicable law; clinical documentation of accidents and incidents and of follow-up care provided; court orders establishing guardianship of the individual if applicable; advance directives of the individual if possible; and court orders and other court documents received by the facility. When clinical records or parts of clinical records are released as provided in this section, copies of the clinical record should be released. If the record is electronic, a tangible copy may be produced as legally sufficient for purposes of disclosures, except as otherwise provided in this section. The name(s) or other identifying information of other individuals who are receiving or formerly received treatment or services may not be recorded in an individual's clinical record. The initials of another individual may be recorded if necessary.

### **(2) Confidentiality.**

(a) The Department shall create and enact policies that implement the rules relating to confidentiality contained in HIPAA and in federal substance abuse confidentiality laws and regulations. Staff shall comply with applicable confidentiality provisions established by Georgia law.

### **(3) Examination by individual.**

(a) Every individual currently or formerly admitted to a facility shall have the right to examine all clinical records kept in that individual's name by the Department or the facility where the individual is or was hospitalized or treated; provided, however, that if the individual is currently admitted to the facility, the individual shall not have the right to examine such clinical records if:

1. The disclosure of such records to the individual is determined, by the chief medical officer or Regional Hospital Administrator or the individual's attending physician or psychologist, to be detrimental to the individual's physical or mental health; and

2. A notation to that effect is made in the individual's record.

(b) Each facility shall assist individuals in reviewing their own records but may establish reasonable limitations, such as those relating to time, place, and frequency, upon such review.

### **(4) Correction by individual.**

(a) Every individual currently or formerly admitted to a facility shall have the right to request that any inaccurate information found in the individual's clinical record be corrected. A request from an individual currently admitted to a facility shall be made in writing to the person in charge of records at the facility or to another person designated by the superintendent. That person will consult the appropriate staff at the facility if needed. If the request is made orally to a staff member, that staff member will assist the individual in making the request to the appropriate person.

(b) Upon receipt of a request for correction of the record of an individual currently or formerly admitted to the facility, the person in charge of records at the facility or the person so designated shall within 5 days:

1. Make the requested correction, and provide the individual with a copy of the corrected record; or

2. Notify the individual, in writing, of the inability to obtain amendment of the record and the reason therefore, and notify the individual that he may file a complaint regarding this refusal in accordance with § 82-5-1-.08(1) of these regulations; such notification shall be complete upon mailing.

(c) If amendments are made to the records of an individual currently or formerly admitted to a facility, they should be added to the record and the original record should be preserved.

**(5) Copies.**

(a) It is the policy of the Department to provide routine information to the general public in compliance with the Georgia Open Records Act or DBHDD policy regarding medical records.

(b) Fees charged for copying services in State facilities shall comply with policies set by the Department.

(c) Waiver or reduction of fees may be granted where such action is in the public interest or when based on an individual's ability to pay.

(d) Staff members shall assist the individual in the selection of records for copying purposes. A policy of full disclosure and assistance shall be followed, while waste in copying practices is to be discouraged.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.06

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-166](#), [37-4-125](#), [37-7-166](#), [37-3-167](#), [37-4-126](#), [37-7-167](#).

**HISTORY:** Original Rule entitled "Clinical Records" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **82-5-1-.07 Notice; Representatives and Guardians Ad Litem**

**(1) Notice.**

(a) To individual: Any time that notice is required to be given to an individual by these regulations or other applicable law, the date on which the notice is given shall be entered in the individual's clinical record. If the individual is unable to read or comprehend a notice sufficiently, a reasonable effort shall be made to explain the notice to them.

(b) To representatives: At any time that notice is required to be given to an individual's representatives, the notice shall be served on those persons designated in accordance with § 82-5-1-.07(2) of these regulations. The individual's guardian ad litem shall likewise be served. Unless otherwise provided, notice may be served in person or by first class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the individual's clinical record. Service shall be complete upon mailing to the last known mailing address.

(c) Judicial orders. At any time a court enters an order affecting an individual pursuant to these regulations or other applicable law and serves said order on the Department, a copy of that order shall be served on the individual and the individual's representative as provided in subparagraphs (a) and (b) of this subsection, unless the order contains an accompanying certificate that such service has already been made.

**(2) Representatives and Guardians Ad Litem.**

(a) Selection. At the time an individual is admitted to a facility, the names and addresses of at least two representatives shall be entered in the individual's clinical record. The individual has the right to designate one representative.

1. If the individual designates one representative, the facility shall designate the second, who shall be selected from the following persons in the order of listing: the individual's legal guardian, spouse, an adult child, parent, attorney, adult next of kin, or adult friend.

2. If the individual does not exercise the individual's right to designate one representative, the facility shall designate both of the individual's representatives, in accordance with the following rules.

(i) One of the representatives shall be selected from the following persons in the order of listing: the individual's legal guardian, spouse, an adult child, parent, attorney, adult next of kin, or adult friend.

(ii) The second representative shall be selected from the same list without regard to the order of listing, but shall not be the person who signed the petition allowed under the provisions of O.C.G.A. Chapters 37-3, 37-4, and 37-7.

3. If the facility is unable to secure at least two representatives after diligent search, or if an agency or agent of the State of Georgia is the guardian of the individual, that fact shall be entered in the individual's record and the facility shall apply to the court in the county of the individual's residence for the appointment of a guardian ad litem, which shall not be the Department.

4. On application of any person or on its own motion, the court may also appoint a guardian ad litem for an individual for whom representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the individual's rights. Such guardian ad litem shall act as the representative of the individual on whom notice is to be served under the applicable provision of law and shall have the powers granted to representatives by those provisions.

(b) Powers.

1. Representatives shall have the power to receive the notices required to be sent to them by these regulations and other applicable law, and the power to consult with the facility staff to the extent allowed by law and policy.

2. Guardians ad litem shall have the power to receive the notices required to be sent to them by these regulations or other applicable law. The guardian ad litem's power shall accord with the limited purpose stated in the order of the court, and the guardian ad litem's appointment shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment, and the authority of the guardian ad litem will not generally extend to acting on behalf of the individual with regard to matters such as consent for placement or medical treatment.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.07

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-147](#), [37-4-107](#), [37-7-147](#), [37-3-164](#), [37-4-44](#), [37-7-164](#).

**HISTORY:** Original Rule entitled "Notice; Representatives and Guardians Ad Litem" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **82-5-1-.08 Remedies for Violations**

(1) Complaint Procedures.

Any individual (or the individual's guardian or parent of a minor individual, if applicable) or the individual's representative or any staff member may file a complaint alleging that an individual's rights under these regulations or other applicable law have been violated by staff members or persons under their control. A person who considers filing such a complaint is encouraged to resolve the matter informally by discussing it first with the staff members or other persons involved, with the Personal Advocate, with a member of the Human Rights Committee, or similar mechanism. Such complaints, when arising, shall be governed by policy established and maintained by the Department in a manner that is consistent with the standards set forth in this section. Such policy shall establish procedures consistent with the following:

(a) The Department shall establish and maintain policies that set forth procedures by which individuals may file complaints relating to individuals' rights. The Department shall establish and maintain multiple means by which all individuals are notified of the ways they may file a complaint.

1. Each facility that is subject to these regulations shall appoint a Personal Advocate whose responsibilities will include involvement with the Complaint process as set forth in these regulations and as set forth in Department policy.

2. Each facility that is subject to these regulations shall establish and maintain a Human Rights Committee, at least two members of which shall not be employees of the facility. The responsibilities of the Human Rights Committee shall include review of the manner in which the facility addresses complaints that are the subject of this regulation.

(b) The Department shall establish policies that set forth the manner and timeframe in which a disinterested staff member, designated by position, investigates each unresolved complaint, as well as timeframes in which each complaint investigation must be completed and the manner in which the conclusion of the investigator is delivered to the individual.

(c) The Department shall establish policies that set forth the manner and timeframe in which an individual may appeal the conclusion of the investigator. Any such appeal must be reviewed by a disinterested staff member, appointed by the Regional Hospital Administrator, who is qualified by training and experience to review such an appeal. Policy shall set forth timeframes during which evaluation of any such appeal must be completed and the manner in which the conclusion of the reviewer will be delivered to the individual. The Regional Hospital Administrator must approve the resolution of the appeal before it is provided to the individual.

(d) The Department shall establish policies that set forth the manner and timeframe in which an individual may appeal to the Commissioner the resolution an initial appeal. Any such appeal must be reviewed by a disinterested DBHDD staff member appointed by the Commissioner who is qualified by training and experience to review such an appeal. Policy shall set forth timeframes during which evaluation of any such appeal must be completed and the manner in which the conclusion of the staff member who has reviewed the appeal will be delivered to the individual. The Commissioner or the Commissioner's designee must approve the resolution of the appeal to the Commissioner before the resolution is provided to the individual.

(e) No appeal under this regulation is subject to judicial review.

(f) The individual is not required to use the procedure established by this section in lieu of other available legal remedies.

## (2) General Provisions.

(a) Whenever the Human Rights Committee or the Personal Advocate becomes aware of a situation that appears to require immediate action to protect the welfare and safety of any individual, the Committee or the Personal Advocate shall immediately notify the nearest available staff member with authority to correct the situation. In any situation that requires immediate action to protect an individual's welfare or safety, the Regional Hospital Administrator may be notified instead. If adequate corrective action is not taken by that staff member, the Committee or the Personal Advocate shall immediately notify the Regional Hospital Administrator, or if necessary, the Director or the Commissioner of the Department.

(b) No person shall be subject to any form of discipline or reprisal solely because they sought a remedy through, or participated in, the procedures established by this section.

(c) Obstruction of the investigation or disposition of a complaint by any person shall be reported to the Regional Hospital Administrator, who shall take action to eliminate the obstruction. Staff members are subject to adverse action in accordance with personnel procedures of the Department for engaging in such obstruction.

(d) This complaint procedure does not replace or invalidate any other Department policy or procedure pertaining to reporting requirements, disciplinary matters, or the like.

(e) Staff members who are involved in a complaint shall not be involved in processing that complaint.

(3) Judicial Supervision.

(a) Any individual (or the individual's guardian or parent of a minor individual, if applicable) or the individual's representative may file a petition in the appropriate court alleging that:

1. The individual is being unjustly denied a right or privilege granted by these regulations or other applicable law; or
2. A procedure authorized by these regulations or other applicable law is being abused; or
3. The individual objects to the treatment being administered to the individual.

(b) Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue appropriate orders to correct any abuse of these regulations or other applicable law. The individual, the individual's representatives, or the individual's attorney may appeal any such order of the probate court or of the court's hearing officer to the superior court of the county in which the proceeding was held, and may appeal any such order of the Juvenile Court to the Court of Appeals and to the Supreme Court.

(c) At any time and without notice, a person detained by a facility, or a relative or friend on behalf of such person, may petition as provided by law for a writ of habeas corpus to question the cause and legality of detention and to request any court of competent jurisdiction on its own initiative to issue a writ of release. In the case of any such petition for the release of a person detained in a facility pursuant to a court order under O.C.G.A. § [17-7-130](#) or O.C.G.A. § [17-7-131](#), a copy of the petition, along with proper certificate of service, shall also be served upon the presiding judge of the court ordering such detention and the prosecuting attorney for such court; service may be made by certified mail, return receipt requested.

(4) Medication Prior to Hearings. The individual has a right to appear and testify at hearings free from any side effects or adverse effects of medication as is reasonably possible. The individual's attorney, if any, should be informed of any medication the individual is receiving at the time of the hearing.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.08

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-3-149](#), [37-4-109](#), [37-7-149](#), [37-3-148](#), [37-4-108](#), [37-7-148](#).

**HISTORY:** Original Rule entitled "Remedies for Violations" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-5-1-.09 Severability**

In the event that any rule, sentence, clause or phrase of any of the rules and regulations in this Chapter may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof determined, declared, or adjudicated invalid or unconstitutional were not originally part of these rules.

**Cite as** Ga. Comp. R. & Regs. R. 82-5-1-.09

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#).

**HISTORY:** Original Rule entitled "Severability" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **Department 82. DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES**

### **Chapter 82-7. PATIENT COST OF CARE**

#### **Subject 82-7-1. PATIENT COST OF CARE**

##### **82-7-1-.01 Legal Authority**

The legal authority for this chapter, unless otherwise noted, is the Patient Cost of Care Act, O.C.G.A. Title 37, Chapter-9.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.01

**AUTHORITY:** O.C.G.A. § [37-9-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Legal Authority" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

##### **82-7-1-.02 Applicability**

This chapter applies to any state hospital under the control of the department and any facility that provides services to individuals that is controlled by a state hospital.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.02

**AUTHORITY:** O.C.G.A. § [37-9-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Applicability" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

##### **82-7-1-.03 Organization and Purpose**

The purpose of these rules is to effect the requirements of the Patient Cost of Care Act, which mandates that the Georgia Department of Behavioral Health and Developmental Disabilities establishes standards for determining assessments for patient cost of care, determines liability thereof, makes investigations thereof, establishes billing and collection procedures, and provides for hearings, among other requirements.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.03

**AUTHORITY:** O.C.G.A. § [37-9-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Organization and Purpose" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

##### **82-7-1-.04 Definitions**

(1) Unless a different meaning is required by the context, the following terms as used in these regulations shall have the meanings hereinafter set forth:

(a) "Assessment" means a determination by the Department of the amount payable by the persons liable for cost of care for services rendered to an individual; such amount shall be either the full cost of care or, if applicable, the amount payable toward cost of care, determined in accordance with the requirements of O.C.G.A. § [37-9-5](#). There

shall be a rebuttable presumption that the full cost of care be imposed. This presumption shall prevail until testimony, documentation, or evidence is provided pursuant to other provisions of O.C.G.A Title 37, Chapter 9.

(b) "Commissioner" means the Commissioner of the Georgia Department of Behavioral Health and Developmental Disabilities, or the Commissioner's designee.

(c) "Cost of care" means the costs incurred for the support, care, and treatment of each individual, or the per patient average of such costs as determined by the Department on the basis of the estimated current operating costs of the hospital or an identifiable part or section thereof providing such services.

(d) "Department" means the Georgia Department of Behavioral Health and Developmental Disabilities and includes its duly authorized agents and designees.

(e) "Hospital Chief Financial Officer" means that person appointed by DBHDD's Chief Financial Officer or their designee to manage the administration of the Patient Cost of Care Program.

(f) "Income," except for individuals who are residents of other states, means that amount determined by adding to the gross income as now or hereafter defined in Georgia income tax laws, minus deductions and personal exemptions as authorized by such income tax laws, in addition to the items listed in this paragraph, if such items are not already included in gross income as defined above. For an individual who is a resident of another state, "income" means the same as above except no deductions will be made for any deductions or personal exemptions as authorized by Georgia income tax laws. The following items are to be added, respectively:

1. Any amounts received by or on behalf of the person liable for cost of care from accident insurance or workers' compensation for total or partial incapacity to work, plus the amount of any damages received by or on behalf of the person liable for cost of care, whether by suit or agreement, on account of such injuries or sickness;
2. The net income from property acquired by gift, bequest, devise, or descent;
3. Interest upon obligations of the United States government or of this state or of a political subdivision thereof;
4. The net income from individual holdings of stock in banks and trust companies incorporated under the banking laws of this state or of the United States;
5. Retirement income, social security benefits, veterans' benefits, and any other benefits that could be applied for the support of the individual served;
6. The net income from any other assets, including but not limited to personal property, real property, mixed property, and any other property or estate wherever located and in whatever form, inclusive of any assets sold or transferred within a period of ninety (90) days prior to the date services were first rendered to the individual by a hospital.

(g) "Individual" (formerly referred to as client, consumer, and/or patient) means any person who is admitted to or who receives services from a state hospital, including any person who is admitted to or receives services from a facility operated by a state hospital.

(h) "Persons liable for cost of care" means:

1. The individual served or their estate;
2. The individual's spouse;
3. The parent or parents of any individual under eighteen (18) years of age who is served;

4. Any fiduciary or representative payee holding assets for the individual or on their behalf, including, in such person's representative capacity, the guardian, trustee, executor, or administrator of any trust, estate, inheritance, or fund in which an individual has a legal or beneficial interest;

5. Any person, if not otherwise liable, listed as the insured member of a contract, plan, or benefit to the extent that such contract, plan, or benefit provides payment of hospitalization, medical expenses, and other health care services for the individual as a covered beneficiary or dependent;

6. A stepparent or any other person residing with and providing support of an individual under eighteen (18) years of age who has not been legally adopted by such stepparent or other person, with maximum liability limited to the amount such stepparent or other individual is authorized by Georgia income tax laws to claim as a standard deduction and personal exemption for the individual receiving services; provided, however, that this limitation shall not apply to liability pursuant to other provisions of this chapter regarding hospital, health, and other medical insurance, program, or plan benefits or subrogation rights.

(i) "State hospital" means any state hospital which now or hereafter comes under the control of the Department and any facility operated in conjunction therewith. This includes facilities operated by state hospitals that are not located on state hospital grounds and that also provide care or services to individuals.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.04

**AUTHORITY:** O.C.G.A. § [37-9-2](#)

**HISTORY:** Original Rule entitled "Definitions" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.05 Authority to Develop Procedures**

The Commissioner hereby is empowered to delegate authority to implement these regulations, including authority to determine assessments based on the standards prescribed in these Cost of Care regulations to the DBHDD Chief Financial Officer. Each determination of assessment shall be made pursuant to procedures developed under the direction of the Commissioner in accordance with these regulations and the Patient Cost of Care Act.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.05

**AUTHORITY:** O.C.G.A. § [37-9-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Authority to Develop Procedures" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.06 Care of Individuals Not Related to Payment**

Care rendered to all individuals in state hospitals and programs shall be of the same nature and quality without regard to whether the payment of any sum or sums is made for the cost of care.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.06

**AUTHORITY:** O.C.G.A. § [37-9-3](#).

**HISTORY:** Original Rule entitled "Care of Individuals Not Related to Payment" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.07 Responsibility for Cost of Care**

(1) Each individual receiving services from a state hospital shall be legally responsible for and shall pay to the Department of Behavioral Health and Developmental Disabilities, the cost of their care received from a state hospital. Payments for cost of care shall be payable following the receipt of services in accordance with standards

and procedures established by the Department. In the event the Department is unable to collect the assessment from the individual served, or in the event the individual's assessment is less than the full cost of care for such individual, all other persons liable for the cost of care for such individual shall pay to the Department their respective assessments as provided by O.C.G.A § [37-9-5](#).

(2) The Department shall develop procedures by which it shall determine all persons who are liable for the cost of care of an individual and by which it shall notify such persons of their joint and several liability and of their assessment. Such notice shall offer opportunity for any person so notified to be heard to show cause, if there be any, why such person should not be liable for payment of the assessment, as provided by O.C.G.A § [37-9-5](#).

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.07

**AUTHORITY:** O.C.G.A. § [37-9-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Responsibility for Cost of Care" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.08 Requirements for Procedures to Determine and Allocate Cost of Care**

(1) The Department shall establish:

- (a) A method for determining cost of care;
- (b) A method for assessing the portion of cost of care owed by each individual;
- (c) A method for determining other persons liable for cost of care for each individual;
- (d) A method for notifying each individual (including any representative of that individual designated in accordance with GA COMP. R. & REGS § 82-5-1.07(2) ) and/or persons liable for cost of care of the responsibility for assisting the Department in assessing cost of care, the assessment of the individual's cost of care, and the right to contest and appeal the assessment of the cost of care for which that person is liable.

(2) The Department's procedures shall meet the following requirements:

- (a) The procedures shall comply with the Patient Cost of Care Act, O.C.G.A. Title 37, Chapter 9.
- (b) The procedures shall ensure each individual receives appropriate care and treatment regardless of any issue related to cost of care.
- (c) The procedures shall ensure that each assessment of an individual's responsibility for cost of care will be based upon:
  - 1. a determination that each individual has exhausted his or her eligibility and receipt of benefits under all other existing or future private, public, local, state, or federal programs or plans and;
  - 2. upon a process by which the Department assesses and recovers the cost of an individual's care from the individual and from or any other persons or entities who may be liable for such patient's cost of care if such patient is eligible for benefits under any other program or plan.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.08

**AUTHORITY:** O.C.G.A. § [37-9-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Requirements for Procedures to Determine and Allocate Cost of Care" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **82-7-1-.09 Standards for Assessments**

(1) Standards for determining assessments are based on the income, assets, insurance, and other third-party coverage or entitlements, and other circumstances of persons liable for cost of care.

(2) The Department hereby establishes the assessment for cost of care for any individual covered by a contract of insurance or other third-party reimbursement contract or entitlement as:

(a) the total amount payable under such contract or entitlement up to the total cost of care, or that portion of cost of care payable under such contract or entitlement; provided, however, that if benefits payable under such contract or entitlement are less than the total cost of care, the amounts payable by all persons liable for cost of care toward any remaining balance shall be determined by application of the standards prescribed in paragraphs (3) and (4), below; further provided, however, that:

1. amounts payable toward any remaining balance for an individual eligible under any insurance contract, plan, or benefit shall be determined in accordance with any provisions for payment stipulated by the insurance contract, plan, or benefit as a requirement for participation in the insurance, plan, or benefit;

2. amounts payable toward any remaining balance for an individual eligible under the Medical Assistance Program (Title XIX of the Social Security Act) shall be determined in accordance with the provisions of the Georgia State Plan for Medical Assistance; and

3. amounts payable toward any remaining balance for a person eligible under the Medicare Program (Title XVIII of the Social Security Act) shall be determined in accordance with the regulations and policies of the Social Security Administration; or,

(b) the total amount payable under such contract or entitlement which exceeds total cost of care if paid in accordance with the provisions or regulations of such contract or entitlement.

(3) The Department shall develop a standard scale for determining assessments for cost of care for all individuals and other persons liable for cost of care, except as provided in paragraph (2) above, or further provided in paragraph (3) below, derived by application of the following factors:

(a) for all individuals except as provided in paragraphs (b) or (c) below:

1. poverty income guidelines published by the federal government, effective upon issuance by the Department; but effective not later than sixty (60) days following the publication date of the revised guidelines in the Federal Register;

2. total of deductions and personal exemptions allowable under Georgia Income Tax laws and regulations; except (1) no deductions or personal exemptions will be allowed to persons residing in another state, and (2) no deductions or personal exemptions will be allowed more than once in calculating assessments of the individual and other responsible parties for each individual served;

3. a graduated range of income levels in excess of the sum of (3)(a)1. and (3)(a)2. above;

4. the number of dependents as defined by Georgia Income Tax Laws and regulations, except that no dependent is to be reflected more than once in calculating assessment(s) for any one individual served;

5. a base and graduated percentage charge associated with each income level;

6. a charge in conjunction with the initial and any subsequent annual assessment associated with assets that are not exempt from Medicaid or Social Security calculations equal to five percent (5%) of accumulated non-exempt assets; except, effective January 1, 1993, for individuals hospitalized six (6) continuous months and having assets accumulated from government benefit payments, a charge associated with assets will be made as provided in paragraph (c) below;

(b) for individuals remaining in inpatient care in State Hospitals longer than three (3) continuous months but fewer than six (6) continuous months, who receive monthly benefits or funds:

1. on earned income and other income which is not paid or otherwise available to be paid on a regular monthly basis, the same factors as (3)(a)1.-5.;

2. on benefits or other funds paid or available to be paid on a regular monthly basis, even though actual payments may occur at a different interval of time:

(i.) total of benefits and funds received or available to be received on a monthly basis;

(ii.) a deduction equal to the amount of the personal needs allowance allowed individuals in state operated hospitals or state operated facilities, in accordance with the State Medical Assistance Plan;

(iii.) any other deduction that the Department clearly defines by published policy prior to allowing such deduction;

(iv.) a charge in conjunction with the initial and any subsequent annual assessment associated with assets that are not exempt from Medicaid or Social Security calculations equal to five percent (5%) of accumulated non-exempt assets; except, effective January 1, 1993, for individuals hospitalized for six (6) continuous months and having assets accumulated from government benefit payments, a charge associated with assets will be made as provided in paragraph (c) below.

(c) for patients hospitalized six (6) or more continuous months and remaining in inpatient status, who have accumulated assets from government benefit payments, effective January 1, 1993:

1. a charge for full cost of care against the individual's accumulated assets which are in excess of allowed limits as those for establishing eligibility for institutionalization benefits under the State Medical Assistance Plan and which are not otherwise exempt and counted as resources of the individual under the State Medical Assistance Plan.

(4) The Department prescribes the same standard scale referenced in Paragraph (3), above, for a stepparent or other person residing with and providing support of an individual under eighteen (18) years of age who has not been legally adopted by such stepparent or other person; except, after application of the factors in paragraphs (3)(b)-(c) to derive an assessment for such individual, liability will be capped at the total amount such individual is authorized by Georgia income tax laws to claim as a standard deduction and personal exemption for the individual.

1. This provision of limited liability does not apply to hospital, health, and other medical insurance, program, or plan benefits payable toward cost of care; any benefits or funds or other entitlements for which the individual is eligible; or to any subrogation rights as provided by law.

2. The resultant standard scale shall be published in a uniform table and is hereby incorporated into these rules, and by reference, made a part thereof. Copies of the standard scale shall be available on request at each Hospital Patient Accounts Office.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.09

**AUTHORITY:** O.C.G.A. §§ [37-9-2](#), [37-9-5](#), [37-9-6](#), [37-9-7](#), [37-9-8](#), [37-9-9](#).

**HISTORY:** Original Rule entitled "Standards for Assessments" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.10 Reassessments/Redeterminations**

(1) The Department shall reexamine the individual's assessment periodically and adjust such assessment as hereinafter provided in accordance with changes in the ability to pay of the person liable for cost of care and in a manner that complies with the Patient Cost of Care Act. If the Department determines that the economic circumstances of a person liable for cost of care have improved to an extent justifying an increase in the assessment, any such increase shall apply only to cost of care for services rendered for the individual after the effective date of

the increase in assessment. No such increase shall cause the assessment to exceed the total cost of care. The Department may not increase an assessment without affording the person liable for cost of care an opportunity for a hearing on the increase in the assessment. A person liable for cost of care may apply to the Department for a change in the assessment when the person's economic circumstances have changed sufficiently to adversely affect their future ability to pay. If an assessment for services previously rendered for an individual is being paid in accordance with a scheduled plan of payments approved by the Department, then a reduction in assessment because of a change in the economic circumstances affecting the ability to pay of the person liable for cost of care may apply to that portion of the assessment which remains unpaid as of the date of the reduction, as well as to the assessment for cost of services rendered after the date of the reduction. However, no such reduction shall require the refund of any payments made on an assessment prior to the date of the reduction. After investigation and hearing, the Department shall act upon the application made by the person liable for cost of care. Any redetermination of the assessment pursuant to this subsection shall be subject to the requirements of O.C.G.A. § [37-9-6](#). Notwithstanding any reexamination or corresponding adjustment of an assessment which might be afforded, each assessment shall be valid for a period of twelve (12) months from the date of the initial assessment or any reassessment thereafter. No reduction, increase, or opportunity for hearing shall be allowed after the assessment period.

(2) All assessments determined under the provisions of the Patient Cost of Care Act, and in accordance with the standards prescribed in Rule 82-7-1-.09 above, shall be subject to redetermination under any of the following circumstances:

(a) On request of any person who has been notified of liability for payment of cost of care in either their personal or representative capacity;

(b) On discovery by the Department of error, omission, or false statements which were relied upon by the Hospital Chief Financial Officer in determining assessments for cost of care;

(c) On discovery by the Department of changes in economic circumstances of any person liable for cost of care assessments; and

(d) At the end of a period not to exceed twelve (12) months from the date an assessment was originally made.

(3) Except as determined under the provisions of paragraph (2) above, no redetermination shall increase the assessment for cost of care for services received prior to such redetermination. Such redetermination may decrease assessments for care previously received if a change in economic or other circumstances so dictates. However, no such reduction shall require the refund of any payments made on an assessment prior to the date of the reduction of the assessment.

(4) The Department may accept payment for full cost of care if any person liable for cost of care offers such payment in lieu of declaring financial circumstances and having an assessment determined by hearing.

(5) The Department shall adopt and comply with procedures to inform adequately individuals served and other persons liable for the cost of care of their right to hearings and of their right to request reassessments.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.10

**AUTHORITY:** O.C.G.A. §§ [37-9-4](#), [37-9-5](#).

**HISTORY:** Original Rule entitled "Reassessments/Redeterminations" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.11 Investigation of Income and Assets of Persons Liable for Cost of Care**

(1) As provided in O.C.G.A. § [37-9-7](#), the Department, through its duly authorized agents, has the authority to investigate or otherwise determine the income and assets of the individual served or their estate and, when necessary, the income and assets of all other persons liable for the cost of care of such individual to determine ability to pay cost of care. Furthermore, all persons liable for cost of care must provide signed consent forms to authorize an investigation to determine the income and assets of such persons to determine ability to pay cost of care. The

Department shall further have the authority to contract with any person, firm, or corporation it finds necessary to provide the information appropriate for carrying out its duties under this chapter.

(2) The Department requires declarations to be filed by the individual served or other persons liable for cost of care necessary to determine the assessments required by this regulation and shall prescribe the form and content thereof. All such declarations are to be regarded as essential to carrying out the public policy of this state; any person who knowingly falsifies such declarations may be referred to law enforcement. If an individual served or other person liable for cost of care fails to provide information required by such declarations or provide signature of consent for the Department to conduct an investigation authorized by subsection (1) of this section, that failure shall create a rebuttable presumption that the individual or other persons liable for cost of care consent to and agree with the assessment of the full cost of care, and the declaration shall contain on its face, conspicuously and in clear language, a statement to that effect.

(3) As provided in O.C.G.A. § [37-9-7](#), the Department, through its duly authorized agents, has access to Georgia income tax records for the purpose of obtaining necessary information to enforce this regulation. Upon the request of the Department or its duly authorized agents, the state revenue commissioner and their agents or employees shall disclose such income tax information contained in any report or return required under Georgia law as may be necessary to enforce the provisions of this chapter. Any tax information secured from the federal government by the Department of Revenue, pursuant to express provisions of § 6103 of the Internal Revenue Code, may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information or tax returns under the authority of this subsection shall be considered either an officer or employee as those terms are used in O.C.G.A. § [48-7-60\(a\)](#); accordingly, any person receiving any tax information or returns under the authority of this subsection shall be subject to O.C.G.A. § [48-7-61](#).

(4) Any evidence, records, or other information obtained by the Department or its duly authorized agents pursuant to the authority of this section is confidential and shall be used by the Department or its agents only for the purposes of enforcing this regulation and shall not be released for any purpose other than a hearing provided for by this regulation.

(5) Persons with no other documentation or evidence may sign an affidavit attesting to their indigent financial status.

(6) In addition to the use of income for determining assessments for the payment of cost of care, any other assets of a person liable for cost of care, except as provided in this regulation, shall be considered in determining an assessment and is liable to be assessed for the payment thereof. Such assets include any tangible or intangible property or any combination thereof and also include the net proceeds derived from the disposition of any such property, including any disposition of any such property which took place ninety (90) days or less prior to the date services were first rendered to the individual by a hospital. When the income of a person liable for cost of care is sufficient to determine that an assessment should be made for the total cost of care, it shall not be necessary for the Department to investigate and determine the other assets of such person; but such investigation and determination may be made by the Department if necessary to collect the assessment from the person liable for cost of care.

(7) The following assets of a person liable for cost of care shall be exempt from subsection (6) of this section:

(a) Real property which qualifies for a homestead exemption from ad valorem taxation; and

(b) Any other real property which constitutes the principal residence of the person liable for cost of care, but which does not qualify for a homestead exemption under this subsection.

(8) Notwithstanding any other provisions of this section, as of January 1, 1993, following six (6) months of continuous inpatient hospitalization, the Department is expressly authorized to levy an assessment for the full cost of care against the assets of all individuals having assets accumulated from government benefit payments in excess of amounts allowed by the eligibility resource limit for institutionalized residents established by Title XIX of the Social Security Act of 1935, as amended, and regulations promulgated pursuant thereto, until said assets are reduced to a level which would establish resource eligibility under such program for the individual served; provided, however, that the assets listed in § 82-7-1-.09 shall be exempt from such assessment if said assets would also be an excluded resource under eligibility criteria of Title XIX of the federal Social Security Act. Following April 13, 1992, the

Department shall provide notice regarding the provisions of this subsection to individuals and family members or other appropriate persons who may be affected by the provisions of this subsection.

(9) Nothing in this regulation shall be construed to supersede the provisions of the Revised Georgia Trust Code of 2010, O.C.G.A Title 53, Chapter 12.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.11

**AUTHORITY:** O.C.G.A. § [37-9-7](#).

**HISTORY:** Original Rule entitled "Investigation of Income and Assets of Persons Liable for Cost of Care" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.12 Sources of Payment of Cost of Care**

(1) Notwithstanding any other provisions of law, the Department is not required to expend public funds for the purpose of providing support, care, and treatment covered under this regulation to any individual until such individual has exhausted the individual's eligibility and receipt of benefits under all other existing or future private, public, local, state, or federal programs or plans.

(2) Before the Department expends public funds for an individual's cost of care, the Department may assess and recover the cost of an individual's care from the individual served or other persons liable for such individual's cost of care if such individual is eligible for benefits under any other program or plan.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.12

**AUTHORITY:** O.C.G.A. § [37-9-9](#).

**HISTORY:** Original Rule entitled "Sources of Payment of Cost of Care" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.13 Administrative Hearing Procedures**

(1) Hearings shall be conducted by the Office of State Administrative Hearings ("OSAH") after referral of any request for a hearing to OSAH.

(2) On request of a party affected by an assessment for cost of care to challenge the assessment, the Hospital receiving such a request will forward the request to the department's legal office so that an OSAH Form 1 may be filed.

(3) DBHDD Legal Services may attempt to resolve the issue with the person requesting a hearing prior to forwarding an OSAH Form 1 to OSAH. The department shall develop policies and procedures that set forth the manner such a request is handled. If the matter is not resolved informally, the department's legal office will file the OSAH Form 1 with OSAH.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.13

**AUTHORITY:** O.C.G.A. § [37-9-10](#).

**HISTORY:** Original Rule entitled "Administrative Hearing Procedures" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.14 Actions for Collection**

The Department shall bill persons liable for cost of care for the amount due on their assessments in the same manner as other debts and accounts. No bill shall be payable unless it contains the dates of service for which the costs billed therein were incurred. The Department is authorized to maintain in the name of the Department and the State of Georgia any action at law or equity in any court of this state or any other state which may be necessary to collect such sums.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.14

**AUTHORITY:** O.C.G.A. § [37-9-11](#).

**HISTORY:** Original Rule entitled "Actions for Collection" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-7-1-.15 Severability**

If any rule, sentence, clause or phrase of any of the rules and regulations in this Chapter may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudicated invalid or unconstitutional were not originally part of these rules.

**Cite as** Ga. Comp. R. & Regs. R. 82-7-1-.15

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#), [37-9-13](#).

**HISTORY:** Original Rule entitled "Severability" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **Department 82. DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES**

### **Chapter 82-8. EMERGENCY RECEIVING, EVALUATING AND TREATMENT FACILITIES**

#### **Subject 82-8-1. EMERGENCY RECEIVING, EVALUATING AND TREATMENT FACILITIES**

##### **82-8-1-.01 Authority**

The legal authority for this Chapter is Chapters 3 and 7 of Title 37 of the Official Code of Georgia, Annotated.

Cite as Ga. Comp. R. & Regs. R. 82-8-1-.01

**AUTHORITY:** O.C.G.A. §§ [37-3-1](#), *et seq.*, [37-7-1](#), *et seq.*

**HISTORY:** Original Rule entitled "Authority" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

##### **82-8-1-.02 Definitions**

(1) Unless a different meaning is required by the context, the following terms as used in this Rule shall have the meaning hereinafter ascribed to them:

(a) The term "private facility" means any hospital facility that is a proprietary hospital or a hospital operated by a nonprofit corporation or association approved for the purposes of Chapter 3 or Chapter 7 of Title 37 of the Official Code of Georgia Annotated, as provided herein, or any hospital facility operated by a hospital authority created pursuant to the "Hospital Authorities Law," Article 4 of Chapter 7 of Title 31. DBHDD's approval or designation of a private facility for such purposes does not make the facility a "state owned" or "state operated" facility within the meaning of Title 37 or of this Chapter of regulations.

(b) The term "Crisis Stabilization Unit" (CSU) means a short-term residential program operated for the purpose of providing psychiatric stabilization and detoxification services that complies with applicable department standards and that provides brief, intensive crisis services 24 hours a day, seven days a week (these standards also apply to Behavioral Health Crisis Centers (BHCCs)) which complies with applicable DBHDD Provider Manuals. CSUs are not "state owned" or "state operated" facilities by reason of Title 37 or of this Chapter of regulations.

(c) The term "department" means the Department of Behavioral Health and Developmental Disabilities of the State of Georgia.

(d) The term "emergency receiving facility" means a facility designated by the department to receive patients under emergency conditions as provided in Part 1 of Article 3 of Chapter 3, or Part 1 of Article 3 of Chapter 7, of Title 37.

(e) The term "evaluating facility" means a facility designated by the department to receive patients for evaluation as provided in Part 2 of Article 3 of Chapter 3, or Part 2 of Article 3 of Chapter 7, of Title 37.

(f) The term "treatment facility" means a facility designated by the department to receive patients for treatment as provided in Part 3 of Article 3 of Chapter 3, or Part 3 of Article 3 of Chapter 7, of Title 37.

(g) The term "Psychiatrist" means any physician certified as a Diplomat in Psychiatry by the American Board of Psychiatry and Neurology, or who has completed three years of approved residency training program in psychiatry and has had two years of full-time practice in this specialty.

(h) The term "VA" means the United States Department of Veterans Affairs.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.02

**AUTHORITY:** O.C.G.A. §§ [37-3-1](#), [37-7-1](#).

**HISTORY:** Original Rule entitled "Definitions" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-8-1-.03 Designation as Emergency Receiving, Evaluating and Treatment Facilities**

The department may designate as an Emergency Receiving, Evaluating, and/or Treatment Facility any private facility or any such portion of a community mental health and substance abuse program which complies with the standards for a CSU within the State of Georgia at the request of or with the consent of the governing officers of such facility.

(1) A VA hospital may lawfully act as an emergency receiving facility, evaluating facility, or treatment facility pursuant to O.C.G.A. § [37-3-102\(a\)](#) without having been designated as such by the department.

(2) Any private facility or any CSU requesting approval and designation as an Emergency Receiving, Evaluating, or Treatment Facility will make application on forms approved by the department.

(3) Any Crisis Stabilization Unit (CSU), to be eligible for designation, shall be a part of a comprehensive community mental health and substance abuse program which comprehensive program has been certified by DBHDD, to be in compliance with applicable DBHDD Provider Manuals.

(4) Any private facility seeking designation by the department must attest that it is compliant with, and must maintain compliance with, the requirements pertaining to emergency receiving, evaluation, and treatment facilities set forth in State of Georgia Rules and Regulations for Hospitals (Georgia Comp. R. & Regs § 111-8-40-.37) and Guidelines for the Design and Construction of Hospitals and Healthcare Facilities. The private facility must submit its attestation of compliance annually.

(5) The facility designated will provide only those emergency receiving, evaluation and/or treatment services for which it has received prior approval from DBHDD.

(6) If a facility already designated as an Emergency Receiving Facility, an Evaluating Facility, and/or a Treatment Facility wishes to add an additional designation, such additional designation requires approval from DBHDD. (For example, if a facility designated only as an Emergency Receiving Facility wishes also to be designated as an Evaluating Facility, DBHDD must approve and confer such designation.)

(7) If a facility moves to a different location, the facility must submit a new application to DBHDD, which will follow its procedure in designating the new facility location as an Emergency Receiving, Evaluating, and/or Treatment Facility. A facility's designation is not transferrable to another location.

(8) The facility must remain in compliance with the CMS regulations and accrediting body standards.

(a) When the Center for Medicare and Medicaid Services (CMS) or any accrediting body makes any findings related to a designated facility's Emergency Receiving, Evaluation, and/or Treatment services, the facility must provide DBHDD with those findings within 30 days of the date on which the findings are communicated to the facility.

(b) Additionally, a copy of any corrective action plan (including any amended corrective action plan or in-process corrective action plan) developed by the facility in response to such findings must be forwarded to DBHDD by the facility within 30 days of the date on which the facility communicates the corrective action plan to CMS or the accrediting body.

(9) If a designated facility is notified that it will lose or has lost any license, or will incur or has incurred a restriction or suspension of any license, the designated facility must notify DBHDD within 24 hours of its receipt of such notice.

(10) If a designated facility wishes to remove one or more of its own designations, the facility shall give written notice to DBHDD at least 30 days in advance of the date on which it intends to cease operating under that designation.

(11) As the department is the best suited entity to determine which facility will be the nearest of its available facilities to which an individual needing admission may be admitted, and as O.C.G.A. § [37-3-100\(a\)](#) and O.C.G.A. § [37-7-100\(a\)](#) provide the department with discretion to designate the state-owned or state-operated facility to which an individual will be admitted for emergency receiving, evaluation, and/or treatment, the department shall establish, maintain, and make publicly available procedures by which a determination is made to which state-owned or state-operated facility an individual will be admitted in the event that the individual is not admitted to a private facility. The department shall make every effort to encourage any person or entity responsible for transporting or for directing transport of an individual to a facility under the terms of Title 37, Chapter 3 and Chapter 7, to make use of these procedures.

(12) As O.C.G.A. § [37-3-100\(a\)](#) and O.C.G.A. § [37-7-100\(a\)](#) provide that the department may designate a private facility as the facility to which an individual is to be admitted for emergency receiving, evaluation, and/or treatment if the department has obtained prior agreement of the private facility, a private facility may decline admission to an individual or limit admission to a class of individuals where such declination is otherwise lawful. Private facilities are reminded that they may be required to comply with the Emergency Medical Treatment and Labor Act (EMTALA), the Americans with Disabilities Act (ADA), and other applicable federal laws.

(13) The department possesses the discretion, under O.C.G.A. § [37-3-100\(d\)](#) and O.C.G.A. § [37-7-100\(d\)](#), to transfer an individual from one state-owned or state-operated facility to another state-owned or state-operated facility.

(a) Such a transfer may be directed to accomplish efficient utilization of a facility as determined by the facility and the department.

(b) Individuals in voluntary legal status may only be transferred with their consent.

(c) Notice of any such transfer shall be provided to the individual and the individual's representatives, and the individual shall be informed in writing as to the reasons for the transfer.

(14) If a private facility or an individual requests a transfer of an individual who has been admitted to a private facility under Title 37, Chapter 3 or Chapter 7, from the private facility to a state-owned or state-operated facility, and the individual meets criteria for admission to the department's facility, the department is required to accept admission of the individual to the state-owned or state-operated facility that the department determines is the most appropriate.

(15) If an individual hospitalized in a state-owned or state-operated facility under Title 37, Chapter 3 or Chapter 7, requests transfer to a private facility, the department shall transfer the individual to the facility if (i) the individual can pay for the individual's treatment at the private facility and (ii) the private facility agrees to accept the individual.

(16) As set forth in O.C.G.A. § [37-3-101](#) and O.C.G.A. § [37-7-101](#), the governing body of the county of residence of the individual involved is required, subject to Court direction, to arrange for emergency transport to an emergency

receiving facility. The governing body of the county of residence of the individual involved further bears responsibility for all required transportation for mental health purposes subsequent to the initial transport.

(a) When an individual is in the care of a facility, the facility may determine the manner of non-emergency transport required for purposes of treatment of an individual. It may request the appropriate county governing body to provide such transportation. If the facility arranges on its own for such transportation to be accomplished by a party other than the Sheriff of the appropriate county, the county shall not be billed, and the facility may bill the individual.

(b) In non-emergency situations, no female shall be transported without another female being in attendance unless the person transporting the female is the female's husband, father, adult brother, or adult son, as required by O.C.G.A. § [37-3-101](#) and O.C.G.A. § [37-7-101](#).

(17) The department shall by December 31, 2021, develop and maintain policies that set forth the manner and frequency in which de-identified, aggregated data is reported to the department pursuant to O.C.G.A. § [37-3-40](#) and O.C.G.A. § [37-7-40](#).

(18) Failure to submit the information required by O.C.G.A. § [37-3-40](#) and O.C.G.A. § [37-7-40](#) shall result in the suspension of a facility's designation as an emergency receiving facility until the required reports are submitted to the department.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.03

**AUTHORITY:** O.C.G.A. Secs. 40, 60, 80 of Chaps. 3 and 7 of Title 37; O.C.G.A. §§ [37-3-6](#), [37-7-7](#).

**HISTORY:** Original Rule entitled "Designation as Emergency Receiving, Evaluating and Treatment Facilities" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-8-1-.04 Emergency Receiving Facility**

(1) A private facility which has been designated as an emergency receiving facility shall comply with the regulations for hospitals set forth in Georgia Comp. R. & Regs. Chapter 111-8-40, as they now exist or as may be amended.

(2) The private facility shall arrange for the availability of a physician who will examine the patient as soon as possible, but in any event within 48 hours of admission.

(3) The private facility shall provide at least one seclusion room that conforms with the requirements of Georgia Comp. R. & Regs § [111-8-40-.37\(5\)](#). Every seclusion area shall be equipped with shatterproof windows and a locked door that can be opened from the outside, to accommodate individuals with reasonable safety, even if such equipment is not otherwise required by § [111-8-40-.37\(5\)](#). The facility must maintain the privacy of any individual in the seclusion room by minimizing that individual's visibility to other individuals being served.

(4) Every Crisis Stabilization Unit (CSU) shall follow the applicable DBHDD policies and applicable DBHDD Provider Manuals.

(5) Every private facility designated as an emergency receiving, evaluating, and/or treatment facility, and every CSU, shall follow generally accepted standards and consider best practices related to discharge planning.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.04

**AUTHORITY:** O.C.G.A. §§ [37-3-40](#), [37-7-40](#).

**HISTORY:** Original Rule entitled "Emergency Receiving Facility" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-8-1-.05 Evaluating Facility**

- (1) A private facility which has been designated as an evaluating facility shall comply with the regulations for hospitals set forth in Georgia Comp. R. & Regs. Chapter 111-8-40, as they now exist or as may be amended.
- (2) The active medical staff of the private facility or the CSU shall include a physician who has completed at least one year of approved psychiatric residency. Additionally, the facility shall make available consultation by a psychiatrist as defined in Rule -.02 of this Chapter.
- (3) The private facility or the CSU shall provide at least one seclusion room that conforms with the requirements of Georgia Comp. R. & Regs § [111-8-40-.37\(5\)](#). Every seclusion area shall be equipped with shatterproof windows and a locked door that can be opened from the outside, to accommodate individuals with reasonable safety, even if such equipment is not otherwise required by § [111-8-40-.37\(5\)](#). The facility must maintain the privacy of any individual in the seclusion room by minimizing that individual's visibility to other individuals being served.
- (4) The private facility or the CSU shall utilize available resources in the community to provide psychological tests and social work services if such services are needed for the patients and do not exist within the facility. In utilizing such resources, the private facility or the CSU shall comply with the requirements of Georgia Comp. R. & Regs § [111-8-40-.37](#); and, if that regulation or any other applicable law or regulation does not permit the utilization of such resource, then this paragraph shall not be construed as authorizing its utilization.
- (5) Every Crisis Stabilization Unit (CSU) shall follow the applicable DBHDD policies and applicable DBHDD Provider Manuals.
- (6) The private facility or the CSU shall follow generally accepted standards and consider best practices related to discharge planning.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.05

**AUTHORITY:** O.C.G.A. §§ [37-3-60](#), [37-7-60](#).

**HISTORY:** Original Rule entitled "Evaluating Facility" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-8-1-.06 Treatment Facility**

- (1) A private facility which has been designated as a treatment facility shall comply with the regulations for hospitals set forth in Georgia Comp. R. & Regs. Chapter 111-8-40, as they now exist or as may be amended.
- (2) The private facility shall have an identifiable program specifically designed for individuals with behavioral health challenges.
- (3) The program described at (2) immediately above shall be directed by a psychiatrist employed or contracted by the private facility.
- (4) The services provided by a private facility shall include, at a minimum, psychological services, social services, activity therapies, and rehabilitation services.
- (5) The private facility shall follow generally accepted standards and consider best practices related to discharge planning.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.06

**AUTHORITY:** O.C.G.A. §§ [37-3-80](#), [37-7-80](#).

**HISTORY:** Original Rule entitled "Treatment Facility" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

## **82-8-1-.07 Enforcement**

(1) The administration and enforcement of these rules and regulations shall be as prescribed in Chapter 1, Chapter 3, and Chapter 7 of Title 37 of the Official Code of Georgia Annotated.

(2) If DBHDD determines that a facility has violated one or more of the regulations in this Chapter, or has failed to comply with one or more DBHDD standards applicable to the facility, or has failed to comply with the terms of any contract or agreement the facility has with DBHDD, then, in addition to any other remedies available by law, DBHDD may enforce the regulations, standards, or contract or agreement by actions which may include:

- (a) issuing a time-limited designation or designations to the facility;
- (b) temporarily suspending a designation or designations of the facility;
- (c) removing a designation or designations of the facility.

(3) DBHDD shall give written notice of any of the actions specified at paragraph (B) above to the facility. Such notice shall clearly state the action being taken, the reason for the action, the duration of the action (provided, however, that the removal of a designation shall be understood to be permanent unless otherwise expressly stated in the notice). Such notice shall also contain information sufficient to allow a facility to exercise its rights under this Rule.

(4) If DBHDD gives written notice as described in paragraph (C) of this Rule, and if the facility has not consented to the action described in the notice, then such action shall be subject to the provisions of Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the Georgia Administrative Procedure Act. Any request for a hearing in response to such action shall be in writing and must be submitted to DBHDD no later than 10 calendar days from the date of receipt of the written notice from DBHDD. If DBHDD transmits the written notice via electronic mail (e-mail), the written notice shall be deemed received by its addressee on the date on which it was sent. The written notice from DBHDD to impose an enforcement action upon any Emergency Receiving, Evaluating, or Treatment Facility shall include the address to which a request for a hearing must be directed.

(5) Any request for a hearing submitted pursuant to paragraph D shall comply with the following:

(a) If DBHDD's written notice states that the revocation or suspension is based on one or more specific findings that the facility violated a state or federal law, these regulations, and/or DBHDD policies and standards, then the request for hearing shall state each finding that the facility wishes to contest at the hearing; and shall also state whether the facility disputes (i) the factual basis of the finding; (ii) DBHDD's determination that the facility violated the law, regulation, or policy or standard; or (iii) both.

(b) If, pursuant to subparagraph (a) immediately above, the facility disputes the factual basis of a finding, then the hearing request shall include a statement explaining why the facility believes the factual basis is untrue.

(c) The hearing request must be sent to DBHDD at the address listed in the written notice to impose an enforcement action.

(d) When DBHDD receives a hearing request in accordance with this regulation, DBHDD shall transmit the hearing request to the Office of State Administrative Hearings in accordance with the Georgia Administrative Procedures Act and shall otherwise comply with that Act.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.07

**AUTHORITY:** O.C.G.A. Title 50, Chapter 13.

**HISTORY:** Original Rule entitled "Enforcement" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

### **82-8-1-.08 Severability**

In the event that any rule, sentence, clause or phrase of any of the rules and regulations in this Chapter may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudicated invalid or unconstitutional were not originally part of these rules.

**Cite as** Ga. Comp. R. & Regs. R. 82-8-1-.08

**AUTHORITY:** O.C.G.A. §§ [37-1-23](#), [37-1-40](#), [37-1-41](#), [37-3-2](#), [37-4-3](#), [37-7-2](#).

**HISTORY:** Original Rule entitled "Severability" adopted. F. Dec. 15, 2021; eff. Jan. 4, 2022.

# **Department 111. RULES OF DEPARTMENT OF COMMUNITY HEALTH**

## **Chapter 111-8. HEALTHCARE FACILITY REGULATION**

### **Subject 111-8-56. NURSING HOMES**

#### **111-8-56-.01 Definitions**

Unless a different meaning is required by the context, the following terms as used in these rules and regulations shall have the meaning hereafter respectively ascribed to them; except, however, same do not apply to nursing homes owned or operated by the Federal Government:

(a) "Nursing Home" is a facility which admits patients on medical referral only and for whom arrangements have been made for continuous medical supervision; it maintains the services and facilities for skilled nursing care, rehabilitative nursing care, and has a satisfactory agreement with a physician and dentist who will be available for any medical and/or dental emergency and who will be responsible for the general medical and dental supervision of the home; it otherwise complies with these rules and regulations;

(b) "Skilled Nursing Care" means the application of recognized nursing methods, procedures, and actions directed toward implementation of the physician's prescribed therapeutic and diagnostic plan, detection of changes in the human body's regulatory system, preservation of such body defenses, prevention of complications, and promotion of emotional well-being, including but not limited to the following:

1. The administration of oral or injectable medications which cannot be self-administered. Other examples include the administration of oxygen, the use of suction, the insertion or changing of catheters, the application of medicated dressings, the use of aseptic technique and preparation of the patient for special procedures;
2. Observation in the care of the patient for symptoms and/or physical and mental signs that may develop and which will require attention of the physician and a revision in the patient's treatment regimen.

(c) "Rehabilitative Nursing" means the use of nursing skills and techniques to combat deformities and helplessness, to maintain or restore body functions, and to promote independence in self-care. Such techniques will include but not be limited to the following:

1. Positioning patients in or out of bed to maintain good body alignment (unless contraindicated by physician's orders), the use of range of motion exercises to maintain joint mobility;
2. Arranging a progression of self-care activities such as transfer and walking, and attention to bowel and bladder schedules together with retraining when indicated.

(d) The term "Distinct Part" means a physically identifiable unit of a medical facility such as an entire ward or contiguous wards, wing, floor, or building. It consists of all beds and related facilities in the unit;

(e) The term "Nursing Unit" means the number of patient beds assigned to a nurses' station;

(f) The term "Nurses' Station" means a circumscribed location containing communication and recording tools and equipment essential for the operation of nursing services;

(g) The terms "Patient" and "Resident" mean any person residing in and receiving care or treatment in a nursing home;

- (h) The terms "Patient Care Plan" or "Plan of Care" mean a personalized daily plan of care indicating what care is needed, how it can be best accomplished for each patient, how each patient likes things done, what methods and approaches are most successful, and what modifications are necessary to ensure best results;
- (i) The term "Patient Activities Program" means a schedule of events which are regularly planned and available for all patients, including social and recreational activities involving active participation by the patient, entertainment of appropriate frequency and character, and opportunities for participation in community activities as possible and appropriate;
- (j) The term "Transfer Agreement" means a written contract with other facilities providing for transfer of patients between the facilities and for interchange of medical and other information when the facility cannot provide the level of care needed by the patient;
- (k) "Physician" shall mean a doctor of medicine and/or a doctor of osteopathy duly licensed to practice in this State by the Composite State Board of Medical Examiners, under the provision of the Georgia Medical Practice Act, O.C.G.A. § [43-34-20](#) *et seq.*;
- (l) "Dentist" means any person who is licensed to practice in this State under the provisions of the Dentists and Dental Hygienists Act;
- (m) "Pharmacist" shall mean an individual licensed to practice pharmacy in accordance with the provisions of O.C.G.A. § [26-4-1](#) *et seq.*;
- (n) "Physical Therapist" shall mean an individual who practices physical therapy, and who is registered with the Board of Physical Therapy of the State of Georgia, O.C.G.A. § [43-33-1](#) *et seq.*;
- (o) A "Registered Nurse" is a person who holds a current and valid license as a registered nurse issued by the State of Georgia;
- (p) A "Licensed Undergraduate Nurse" is a person who holds a current and valid license as a licensed undergraduate nurse issued by the State of Georgia;
- (q) A "Licensed Practical Nurse" is a person who holds a current and valid license as a licensed practical nurse by the State of Georgia;
- (r) The term "Full-time Employee" means any person employed who normally works forty (40) hours per week in the home;
- (s) The term "Governing Body" means the Board of Trustees, the partnership, the corporation, the association, the person or group of persons who maintain and control the home and who is legally responsible for the operation;
- (t) The term "Administrator" means an individual who is licensed by the Georgia State Board of Nursing Home Administrators and who has the necessary authority and responsibility for management of the home;
- (u) "Permit" means authorization by the Department to the Governing Body to operate a home and signifies satisfactory compliance with these rules and regulations;
- (v) "Provisional Permit" means authorization by the Department to the Governing Body to operate a home on a conditional basis for a period not to exceed six months to allow a newly established home a reasonable but limited period of time to demonstrate operational procedures in satisfactory compliance with these rules and regulations; or to allow an existing home a reasonable length of time to comply with these rules and regulations, provided said home shall first present a plan of improvement acceptable to the Department. Successive Provisional Permits may be granted to any home having deficiencies only in exceptional cases, in which cases the Governing Body must present a plan of improvement acceptable to the Department;

(w) The term "Plan of Improvement" means a written plan submitted by the Governing Body and acceptable to the Department. The plan shall identify the existing noncompliance of the institution, the proposed procedures, methods, means and period of time to correct the noncompliance;

(x) The term "Board" means the Board of Community Health of the State of Georgia;

(y) The term "Department" means the Department of Community Health of the State of Georgia;

(z) The term "Commissioner" means the chief executive of the Department.

(aa) The term "Dining Assistant" means an individual employed or compensated by the nursing home, or who is used under an arrangement with another agency or organization, to provide assistance with feeding and hydration to residents in need of such assistance. Such individual shall not provide other personal care or nursing services unless certified as a nurse aide or licensed as a registered nurse or practical nurse.

(bb) "Certified Medication Aide" is a person who is a Georgia certified nurse aide and in good standing with the Department who has successfully completed a state-approved medication aide training program, successfully passed a written competency examination and has demonstrated the requisite clinical skills to serve as a medication aide and who is registered on the Georgia Certified Medication Aide Registry.

**Cite as** Ga. Comp. R. & Regs. R. 111-8-56-.01

**AUTHORITY:** O.C.G.A. § [31-7-1](#) *et seq.*

**HISTORY:** Original Rule entitled "Definitions" adopted. F. Feb. 20, 2013; eff. Mar. 12, 2013.

**Amended:** F. Dec. 29, 2021; eff. Jan. 18, 2022.

### **111-8-56-.03 Administration**

(1) Each nursing home shall be under the supervision of a licensed nursing home administrator. An administrator may serve as the administrator of not more than one facility, except that two facilities having common ownership or management located on the same premises may be served by a single administrator. Distinct part facilities sharing a common roof shall be considered one facility. In exceptional circumstances, a waiver may be granted by the Department for a period of six months. Existing facilities not currently meeting this requirement would be exempt for a period of two years from the effective date of this regulation. If an existing facility should undergo a change of administrators during this two-year period, such facility would be required to comply with the regulations.

(2) Each home shall be operated in accordance with policies approved by the Department. These policies shall include but not be limited to those governing admissions, transfers, discharges, physicians' services, nursing services, dietary services, restorative services, pharmaceutical services, diagnostic services, social services, environmental sanitation services, recreational services and clinical records.

(3) Each home shall have a written transfer agreement in effect with one or more hospitals. Nursing homes that are a Distinct Part of a hospital will be considered to meet this requirement if acceptable provisions for the transfer of patients are included in the facility's policies.

(4) There shall be a separate personnel folder maintained for each employee. This folder shall contain all personal information concerning the employee, including the application and qualifications for employment, physical examination and job title assigned. A current job description shall be available for each classification of employee, but may be maintained separately from the personnel folder. The nursing home shall also maintain all documentation of successful completion of the entire certified medication aide training program for each certified medication aide it employs. In addition to all other documents required by state or federal regulations, the nursing home shall maintain documentation of successful completion of the dining assistant training program for each dining assistant.

(5) The home and its premises shall be used only for the purposes for which the home is operated and permitted.

(6) Each home shall, as a condition precedent to obtaining or maintaining a permit to operate a nursing home, carry or be covered by liability insurance coverages or establish or have established for its benefit a self-insurance trust for a nursing home claim. If a home fails to carry or be covered by liability insurance coverages or establish or have established for its benefit a self-insurance trust for a nursing home claim, the Department shall provide notice to such home of its noncompliance and allow such home 60 days in which to comply. A home's failure to maintain such coverage or establish such trust shall result in the Department:

(a) Revoking such home's permit issued to operate the nursing home;

(b) Denying any application to renew such permit; and

(c) Denying any application for a change of ownership of the nursing home.

(7) In response to a reasonable request by a patient or visitor, privacy shall be afforded for conversation and/or consultations.

**Cite as** Ga. Comp. R. & Regs. R. 111-8-56-.03

**AUTHORITY:** O.C.G.A. § [31-7-1](#) et seq.

**HISTORY:** Original Rule entitled "Administration" adopted. F. Feb. 20, 2013; eff. Mar. 12, 2013.

**Amended:** F. Jan. 27, 2017; eff. Feb. 16, 2017.

**Amended:** F. Dec. 29, 2021; eff. Jan. 18, 2022.

### **111-8-56-.04 Nursing Services**

(1) A registered nurse shall be employed full time as director of nursing services. She shall not also be the administrator.

(2) The director of nursing services shall normally be employed on the daytime shift and shall devote full time to the administration of the nursing service which includes a reasonable amount of time with all nursing shifts.

(3) The director of nursing services may also serve as the director of nursing services in another facility in close proximity to the home provided she has a registered nurse assistant who is assigned to each facility full time as supervisor of nursing care. The director's assistant shall devote full time to the supervision of nursing care.

(4) There shall be at least one nurse, registered, licensed undergraduate, licensed on duty and in charge of all nursing activities during each eight-hour shift.

(5) A nursing home may employ certified medication aides for the purpose of performing the technical aspects of the administration of certain medications in accordance with O.C.G.A. § 31-7-12.7. A nursing home shall not employ an individual as a certified medication aide unless such individual is listed in the medication aide registry established and maintained by the Department pursuant to paragraph (2) of subsection (g) of O.C.G.A. § [31-7-12.2](#), and is in good standing with the Department, and has met all of the qualifications in paragraph (3) of subsection (g) of O.C.G.A. § [31-7-12.2](#).

(a) A certified medication aide who meets the criteria established in O.C.G.A. § 31-7-12.7 shall be permitted to perform the following tasks in a nursing home in accordance with the written instructions of a physician:

i. Administer physician ordered oral, ophthalmic, topical, otic, nasal, vaginal, and rectal medications;

ii. Administer insulin, epinephrine, and B12 pursuant to physician direction and protocol;

- iii. Administer medications via a metered dose inhaler;
  - iv. Conduct finger stick blood glucose testing following established protocol;
  - v. Administer a commercially prepared disposable enema as ordered by a physician; and
  - vi. Assist residents in the supervision of self-administration of medications.
- (b) A certified medication aide shall record in the medication administration record all medications that such certified medication aide has personally administered to a resident of a nursing home and any refusal of a resident to take a medication. A certified medication aide shall observe a resident to whom a medication has been administered and shall report any changes in the condition of such resident to a charge nurse.
- (c) All medications administered by a certified medication aide in accordance with O.C.G.A. § 31-7-12.7 shall be in unit or multidose packaging.
- (d) Nothing in this rule or O.C.G.A. § 31-7-12.7 shall authorize certified medication aides employed by a nursing home to administer any Schedule II controlled substance that is a narcotic.
- (e) A nursing home that employs one or more certified medication aides to administer medications in accordance with O.C.G.A. § 31-7-12.7 shall secure the services of a licensed pharmacist to perform the following duties as part of the nursing home's peer review, medical review, and quality assurance functions:
- (i) Perform a quarterly review of the drug regimen of each resident of the nursing home and report any irregularities to the nursing home administrator;
  - (ii) Remove for proper disposal any drugs that are expired, discontinued, in a deteriorated condition, or when the resident for whom such drugs were ordered is no longer a resident;
  - (iii) Establish or review policies and procedures for safe and effective drug therapy, distribution, use, and control; and
  - (iv) Monitor compliance with established policies and procedures for medication handling and storage.
- (f) A nursing home that employs one or more certified medication aides to administer medications in accordance with this Code section shall ensure that each certified medication aide receives ongoing medication training as prescribed by the Department. A registered professional nurse or pharmacist shall conduct quarterly unannounced medication administration observations and report any issues to the nursing home administrator.
- (g) A nursing home that employs certified medication aides the nursing home shall annually conduct a comprehensive clinical skills competency review of each certified medication aide employed by such nursing home.
- (6) There shall be sufficient nursing staff on duty at all times to provide care for each patient according to his needs. A minimum of 2.0 hours of direct nursing care per patient in a 24-hour period must be provided. For every seven (7) total nursing personnel required, there shall be not less than one registered nurse or licensed practical nurse employed. Dining assistants are to be used to supplement, not replace, existing nursing staff requirements and as such are not considered nursing staff and are not to be included in computing the required minimum hours of direct nursing care.
- (7) The nursing staff shall be employed for nursing duties only.
- (8) There shall be sufficient qualified personnel in attendance at all times to ensure properly supervised nursing services to the patients, including direct supervision of dining assistants in accordance with these rules. This includes staff members dressed, awake and on duty all night.

(9) All nursing care and related services shall be carried out in accordance with the facility's patient care policies. The lines of administrative authority and supervisory responsibility shall be clearly stated. Duties assigned to staff members shall be clearly defined and consistent with their training and experience. Policies and procedures governing nursing care shall be assembled, available and understood by the staff members and shall be the basis for staff education and practice.

(10) An active in-service nursing education program shall be in effect for all nursing personnel. This program shall be developed and conducted by a registered nurse who may be employed part-time and under the direction of the director of nursing services.

(11) The in-service nursing educational program shall be in writing and shall show the frequency of training. Attendance and progress records shall be kept for each person receiving instruction.

**Cite as** Ga. Comp. R. & Regs. R. 111-8-56-.04

**AUTHORITY:** O.C.G.A. § [31-7-1](#) *et seq.*

**HISTORY:** Original Rule entitled "Nursing Service" adopted. F. Feb. 20, 2013; eff. Mar. 12, 2013.

**Amended:** F. Dec. 29, 2021; eff. Jan. 18, 2022.

# Department 150. RULES OF GEORGIA BOARD OF DENTISTRY

## Chapter 150-5. DENTAL HYGIENE

### 150-5-.03 Supervision of Dental Hygienists

#### (1) Definitions.

(a) "Authorizing dentist" shall mean a dentist licensed to practice in Georgia who permits a dental hygienist to practice under general supervision.

(b) "Dental hygiene duties" and "dental hygiene services" shall mean those tasks which a dental hygienist may lawfully perform under O.C.G.A. § [43-11-74](#) and this Rule.

(c) "Dental hygienist" shall mean an individual licensed to practice dental hygiene in Georgia.

(d) "Dental screening" shall mean a visual assessment of the oral cavity without the use of x-rays, laboratory tests, or diagnostic models to determine if it appears that a more thorough clinical examination and diagnosis should be conducted by a licensed dentist.

(e) "Dentist" shall mean an individual licensed to practice dentistry in Georgia.

(f) "Direct supervision" shall mean that a licensed dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedure and remains in the dental office or treatment facility while the procedure is being performed by the dental hygienist, and before dismissal of the patient, examines the patient.

(g) "General supervision" shall mean that a licensed dentist has authorized the delegable duties of a dental hygienist but does not require that a licensed dentist be present when such duties are performed.

(2) No dentist shall be required to authorize a dental hygienist to perform dental hygiene duties under general supervision, and no part of this Rule shall be construed as to establish independent dental hygiene practice.

(3) A dental hygienist shall perform duties only under the direct supervision of a duly licensed dentist who is licensed to practice in the State of Georgia, except where otherwise provided in O.C.G.A. § [43-11-74](#) and this rule.

(4) The requirement of direct supervision shall not apply to:

(a) The educational training of dental hygiene students at an institution approved by the Board and the Commission on Dental Accreditation of the American Dental Association, or its successor agency.

(b) The performance of dental hygiene duties at approved dental facilities of the Department of Public Health, county boards of health, or the Department of Corrections, or the performance of dental hygiene duties by personnel of the Department of Public Health or county boards of health at approved off-site locations.

(c) The performance of dental hygienists providing dental screenings in settings which include: schools; hospitals; clinics; state, county, local, and federal public health programs; federally qualified health centers; volunteer community health settings; senior centers; family violence shelters, as defined in O.C.G.A. § [19-13-20](#); and free health clinics, as defined in O.C.G.A. § [51-1-29.4](#). Other health fair settings must be pre-approved by the board.

1. School settings.

(i) School settings shall include only schools that are Title I schools under the federal Elementary and Secondary Education Act, schools in which at least 65% of the student population is eligible for free or reduced price lunch under federal guidelines, Head Start programs, and Georgia's Pre-K Program.

(ii) Dental hygienists may apply topical fluoride and perform the application of sealants and oral prophylaxis under general supervision, with written permission of the student's parent or guardian. A dental hygienist may also, without prior written permission of the student's parent or guardian, provide oral hygiene instruction and counseling.

(iii) A dental hygienist and the authorizing dentist shall maintain the confidentiality of any records related to services provided to a student under subparagraph (4)(c) in compliance with laws including without limitation the federal Family Education Rights and Privacy Act of 1974, [20 U.S.C. Section 1232g](#).

2. Hospitals; nursing homes; long-term care facilities; rural health clinics; federally qualified health centers, health facilities operated by federal, state, county or local governments; hospices; family violence shelters, as defined in O.C.G.A. § [19-13-20](#); and free health clinics, as defined in O.C.G.A. § [51-1-29.4](#).

(i) Dental hygienists may apply topical fluoride and perform the application of sealants and oral prophylaxis under general supervision.

3. A dental hygienist performing duties under subparagraphs (4)(c)(1.) or (4)(c)(2.) shall:

(i) Not perform any dental hygiene services on a patient that has dental pain or clearly visible evidence of widespread dental disease. The dental hygienist shall immediately refer such patient to the authorizing dentist for clinical examination and treatment. The dental hygienist shall notate such patient's file, and the patient shall not be eligible to receive dental hygiene services under subparagraphs (4)(c)(1.) or (4)(c)(2.) until a dentist provides written authorization that such services may be performed on the patient.

(ii) Prior to providing any dental hygiene services, obtain, study, and comprehend the school's or facility's protocols and procedures regarding medical emergencies and implement and comply with such protocols and procedures if a medical emergency arises during the provision of dental hygiene services; and

(iii) Provide to each patient receiving such services written notice containing:

(I) The name and license number of the dental hygienist and the authorizing dentist;

(II) Any dental hygiene issues that the dental hygienist identified during the performance of dental hygiene duties. If dental hygiene services are not performed on a patient under subparagraph (4)(c)(3.)(i), the written notice shall include a statement that the patient is not eligible to receive dental hygiene services until a clinical examination is performed by a dentist, and a dentist provides written authorization that services may be performed;

(III) A statement advising each patient who receives dental hygiene services to seek a more thorough clinical examination by a dentist within 90 days, unless the authorizing dentist performed a clinical examination of the patient.

(iv) Make all reasonable efforts to provide such written notice as required in subparagraph (4)(c)(3.)(iii) to parents or legal guardians of minors or incapacitated adults who receive dental hygiene services and to the long-term care facility or nursing home for residents of such facilities who receive dental hygiene services, as applicable.

(v) Not charge a fee for a dental screening provided under subparagraph (4)(c), except where provided by an employee of the Department of Public Health or county boards of health. However, these fees must be paid directly to the Department of Public Health or that county board of health and not to the dental hygienist who performed the screening.

(vi) Not require a school or facility receiving dental hygiene services under subparagraphs (4)(c)(1.) and (4)(c)(2.) to purchase any equipment.

(5) General Supervision in a Private Office Setting.

(a) A dental hygienist may perform only the following functions under general supervision:

1. Application of sealants and oral prophylaxis and assessment;
2. Fluoride treatment;
3. Oral hygiene instruction and education; and
4. Exposure and processing of radiographs if provided for by specific, individualized standing orders of the authorizing dentist, including any protocols regarding urgent dental issues that arise.

(b) A dentist in a private dental office setting may authorize general supervision of a dental hygienist only upon meeting the following criteria:

1. A new patient of record must be clinically examined by the authorizing dentist during the initial visit;
2. A patient must be examined by the authorizing dentist at a minimum of twelve-month intervals; and
3. A patient must be notified in advance of the appointment that the patient will be treated by the dental hygienist under general supervision without the authorizing dentist being present or being examined by the authorizing dentist.

(6) A dental hygienist performing dental hygiene services under general supervision shall have at least two (2) years of experience in the practice of dental hygiene, shall be in compliance with the continuing education requirements under O.C.G.A. § [43-11-73.1](#) and the cardiopulmonary resuscitation certification requirements under O.C.G.A. § [43-11-73](#), shall be licensed in good standing, and shall maintain coverage under a professional liability occurrence or claims insurance policy with a policy limit minimum of \$1,000,000.

(a) "Experience" means a minimum of 1000 hours of hands-on treatment of patients within the twenty-four (24) month period immediately post-graduation from an accredited dental hygiene program.

(7) In schools; hospitals; clinics; state, county, local, and federal public health programs; federally qualified health centers; volunteer community health settings; senior centers; family violence shelters, as defined in O.C.G.A. § [19-13-20](#); and free health clinics, as defined in O.C.G.A. § [51-1-29.4](#), it shall be in the sole discretion of the authorizing dentist as to whether to require an initial examination of the patient prior to the performance by a dental hygienist of dental hygiene services under general supervision.

(8) A dentist may only authorize up to four dental hygienists total to provide dental hygiene services in any setting or number of settings at any one time. A dentist authorizing one or more dental hygienists to provide dental hygiene services under (4)(c)(1.) and (4)(c)(2.) shall practice dentistry and treat patients in a physical and operational dental office located in this State within 50 miles of the setting in which the dental hygiene services are to be provided under general supervision.

(9) Dental hygiene services provided by dental hygienists in mobile dental vans shall always be provided under direct supervision.

(10) In addition to routine duties and the procedures of any of the operations or procedures authorized in O.C.G.A. § [43-11-74](#), the following activities may be performed by a dental hygienist working under the direct supervision of a dentist:

(a) All the duties that are usually performed by a dental assistant pursuant to Title 43, Chapter 11, Article 4 of the Official Code of Georgia Annotated and Chapter 150-9 of the Rules of the Georgia Board of Dentistry, under the limitations and stipulations set forth in Title 43, Chapter 11, Article 3 of the Official Code of Georgia Annotated and Chapter 150-5 of the Rules of the Georgia Board of Dentistry.

- (b) Take and mount oral x-rays;
- (c) Apply medications and/or solutions approved by the Board and prescribed by the dentist that can be applied by methods approved by the Board, be that by irrigation, tray, or insertion of bioresorbable materials;
- (d) Remove calcareous deposits, secretions, and stains from the surfaces of teeth. Ultrasonic technologies are authorized for use by dental hygienists;
- (e) Utilize techniques and materials necessary for the application of sealant(s) to pits of and fissures of teeth;
- (f) Perform root planning and curettage with hand instruments; and
- (g) Perform periodontal probing.

(11) Nothing in these rules shall be construed as authorizing dental hygienists to utilize other techniques in the course of the performance of their duties, otherwise authorized by these rules. Only dentists licensed by the Georgia Board of Dentistry shall be authorized to perform procedures involving laser technology which alters tissue, creates thermal effect, or is intended to cut, coagulate, photocoagulate, vaporize, or ablate essentially any soft or hard tissues of the body. Additionally, only dentists licensed by the Board shall be authorized to perform procedures utilizing air abrasive technology, which is normally intended for cavity preparation or enamel removal. This is to be distinguished from "micro etching" and "air polishing" technologies which are intended for stain removal and roughening the surfaces of enamel to enhance bonding, similar to acid etching, (i.e., Micro etching and air polishing are technologies authorized for use by dental hygienists).

**Cite as** Ga. Comp. R. & Regs. R. 150-5-.03

**AUTHORITY:** O.C.G.A. §§ [43-11-1](#), [43-11-7](#), [43-11-9](#), [43-11-17](#), [43-11-74](#).

**HISTORY:** Original Rule entitled "Supervision of Dental Hygienists" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule of the same title adopted. F. June 26, 1973; eff. July 16, 1973.

**Amended:** F. May 5, 1982; eff. May 25, 1982.

**Amended:** F. July 2, 1985; eff. July 22, 1985.

**Amended:** F. Sept. 15, 1993; eff. Oct. 5, 1993.

**Amended:** F. Nov. 7, 1994; eff. Nov. 27, 1994.

**Repealed:** New Rule of same title adopted. F. Feb. 1, 1999; eff. Feb. 21, 1999.

**Amended:** F. Jan. 10, 2002; eff. Jan. 30, 2002.

**Repealed:** New Rule of same title adopted. F. Jan. 31, 2003; eff. Feb. 20, 2003.

**Repealed:** New Rule of same title adopted. F. July 28, 2003; eff. Aug. 17, 2003.

**Repealed:** New Rule of same title adopted. F. Sept. 14, 2005; eff. Oct. 4, 2005.

**Repealed:** New Rule of same title adopted. F. Jan. 25, 2007; eff. Feb. 14, 2007.

**Repealed:** New Rule of same title adopted. F. Mar. 27, 2012; eff. Apr. 16, 2012.

**Amended:** F. Mar. 2, 2018; eff. Mar. 22, 2018.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

# Department 160. RULES OF GEORGIA DEPARTMENT OF EDUCATION

## Chapter 160-1.

### Subject 160-1-4. GRANT PROGRAMS

#### 160-1-4-.292 Title I, Part A National Distinguished School Grant

1. **Purpose of Grant.** The purpose of the Title I, Part A National Distinguished School Grant is to award federal funds to two of the top Schoolwide Title I Schools in Georgia for their documented outstanding achievements in education. The grant funds will serve as a reward to these schools for outstanding academic achievement among traditionally underserved subgroups of students. Funds will be used to assist with travel expenses incurred by the schools as the schools serve as Georgia's representatives for the National Association of ESEA State Program Administrators (NAESPA) National Distinguished School Award Ceremony at the NAESPA Conference.

2. **Term and Conditions.** Recipients must meet the eligibility criteria and submit a formal application describing the supplemental initiatives they have put in place that have assisted them in attaining a high level of academic achievement. Grant awards are one-time funds that must be used during the fiscal year in which the funds are awarded.

3. **Eligible Recipient(s).** Schoolwide Title I schools in Georgia that score in the top 5% on the single score of the most current College and Career Ready Performance Index (CCRPI) are eligible to apply.

4. **Criteria for Award.** There are three grant categories in which an eligible school may apply:

After submission, applications are reviewed for adherence to the terms and conditions described above and are scored by the Georgia Department of Education on the quality of the application and alignment with the grant rubric. Funding will be awarded to the two schools with the highest scores provided that they are not in the same category.

5. **Directions and Deadlines for Applying.** Application materials, including information regarding the deadline, are available on the Georgia Department of Education's website for Academic Achievement Programs (<https://www.gadoe.org/School-Improvement/Federal-Programs/title-i/Pages/Academic-Achievement-Awards.aspx>). For additional information, contact the Federal Programs Division - Title I Department, Georgia Department of Education, 1562 Twin Towers East, 205 Jesse Hill Drive, Atlanta, GA 30334 or email TitleI@doe.k12.ga.us.

**Cite as** Ga. Comp. R. & Regs. R. 160-1-4-.292

**AUTHORITY:** O.C.G.A. § [20-2-240](#).

**HISTORY:** Original grant description entitled "Title I, Part A Distinguished School Grant" submitted Nov. 29, 2018.

**Amended:** New title, "160-1-4-.292. Title I, Part A National Distinguished School Grant." Submitted Dec. 7, 2021.

## **160-1-4-.303 Instructional Supports and Teacher Training to Address Readiness in Literacy Grant**

1. **Purpose of Grant.** The purpose of the grant is to provide funds to local educational agencies (LEA) to support leaders and teachers in the teaching of reading to meet the needs of each student and to improve outcomes for specific subgroups.

2. **Term and Conditions.** Grants are awarded through a competitive process to local educational agencies (LEA). LEAs must (1) respond to a need identified in its comprehensive needs assessment, (2) focus on supports to increase student achievement in reading, and (3) select one of the interventions identified within the grant application. Recipients must also produce a report at the conclusion of the grant period. Grant award funds are one-time funds and must be used during the fiscal year in which the funds are awarded. There is no allowability for carryover.

3. **Eligible Recipient(s).** Eligible applicants must be LEAs serving Title I elementary schools.

4. **Criteria for Award.** Applications will be reviewed and scored by the Georgia Department of Education. Funding will be awarded based on rank (the highest score first) and available funding. All recipients will receive 100% of their proposed budget until funds are exhausted. No partial grants will be awarded.

5. **Directions and Deadlines for Applying.** Information about the grant, including the deadline, can be found on the Office of School Improvement, Division of School and District Effectiveness's webpage (<https://www.gadoe.org/School-Improvement/School-Improvement-Services/Pages/default.aspx>) or by contacting the Office of School Improvement at [schoolimprovement@doe.k.12.ga.us](mailto:schoolimprovement@doe.k.12.ga.us). Information about the grant will be shared with all eligible districts.

**Cite as** Ga. Comp. R. & Regs. R. 160-1-4-.303

**AUTHORITY:** O.C.G.A. § [20-2-240](#).

**HISTORY:** Original grant description entitled "Instructional Supports and Teacher Training to Address Readiness in Literacy Grant" submitted Dec. 21, 2021.

# Department 160. RULES OF GEORGIA DEPARTMENT OF EDUCATION

## Chapter 160-4.

### Subject 160-4-8. STUDENT SUPPORT

#### 160-4-8-.05 School Counseling

##### (1) DEFINITIONS.

(a) **Comprehensive School Counseling Program** - a standards-based, data-informed program designed to meet the needs of all students through Student Competencies in an educational setting through Instruction, Small Group support, and Individualized Consultation.

(b) **Domains** - areas of focus within the Student Competencies to support success of all students in their K-12 and post-secondary pursuits.

(c) **Individualized Consultation** - ongoing, comprehensive activities designed to assist individual students in establishing personal goals and developing post-secondary plans.

(d) **Instruction** - structured lessons designed to assist students in attaining the Student Competencies and presented through K-12 classroom and group activities. Each local educational agency (LEA) must follow the provisions of State Board Rule [160-4-4-.10](#) *Instructional Materials Selection and Recommendation* to ensure public review of instructional materials and content.

(e) **School Counselor** - a Georgia Professional Standards Commission certified educator who works in K-12 settings to provide Student Competencies to all students through a Comprehensive School Counseling Program.

(f) **School Counseling Services** - activities aligned to the Student Competencies, within the scope of a Comprehensive School Counseling Program, and conducted by the School Counselor through direct interactions with, and on behalf of, students in the educational setting.

(g) **Student Competencies** - specific, measurable skills and knowledge, as adopted by the State Board of Education, that serve as a foundation for K-12 and post-secondary student success in college, career, and life.

(h) **Small Group** - counseling services provided to students who need targeted, intensive support in ensuring the success of all students in their K-12 and post-secondary pursuits.

##### (2) REQUIREMENTS.

(a) The LEAs shall provide for a Comprehensive School Counseling Program in accordance with state and federal laws, State Board of Education rules, and Georgia Department of Education guidance by:

1. Ensuring that all students have access to a Comprehensive School Counseling Program to include the following:

(i) A clearly defined program which includes, but is not limited to:

(I) The use of Student Competencies to assess student growth and development and inform decisions regarding strategies, activities, and services that help students achieve at the highest academic level possible.

(II) The use of student progress on Student Competencies to guide School Counseling Services decision making and professional learning goals to ensure students have access to a high-quality school counseling program.

(ii) An effective program which includes, but is not limited to:

(I) Program beliefs, vision, and mission statements aligned to school, district, and state goals;

(II) The use of school and student data to set specific and measurable annual student outcome goals, abiding by all federal, state, and local student privacy and parental notification laws, rules, and policies;

(III) An advisory council formed in coordination with school and district leaders, and using school and other widely available data; and

(IV) Action plans that address Instruction, Small Group support, Individualized Consultation, and closing the gap needs based on student and school data.

(iii) A plan for delivering Instruction and services which includes, but is not limited to:

(I) Large group, classroom, and school wide curricula designed to align to Georgia's workforce readiness and outcomes;

(II) Large group, classroom, and school wide curricula designed to help students achieve mastery of the Student Competencies;

(III) Individualized Consultation, student appraisal, and advisement to help students plan, monitor, and manage their own learning;

(IV) Individual and group counseling to support the post-secondary pursuits of all students;

(V) Individual or schoolwide crisis response;

(VI) Services and activities that support a positive school climate;

(VII) Dissemination of school and community resources that assist students and families;

(VIII) Consultation with teachers, parents, and external agencies that support student achievement; and

(IX) Coordination with district and school leaders, and collaboration with other educators, parents, and the community to support student achievement and ensure access to a high-quality school counseling program for all students.

(iv) A plan to effectively assess the program which includes, but is not limited to:

(I) Analysis of school achievement, attendance, and discipline data to identify significant areas of need to be addressed by the school counseling program;

(II) Examination of data and input from students, staff, and the community to determine the effectiveness of school counseling programming;

(III) Evaluation of school counseling program by utilizing an annual program assessment; and

(IV) Transparent communication of program results with stakeholders.

2. Ensuring that each School Counselor:

(i) Engages in School Counseling Services for a minimum of five of six full-time equivalent program count segments as provided in O.C.G.A. § [20-2-182\(c\)](#);

(I) Non-counseling duties should be comparable to the share of additional duties for the other faculty and staff in the school.

(ii) Participates in the training needed to fulfill the responsibilities of his or her job assignments;

(iii) Has the supplies, equipment, and technology necessary to deliver School Counseling Services to students;

(iv) Has a specific area designated in each school that is accessible to all students, including those with disabilities, and situated to protect student and parent confidentiality; and

(v) Abides by all federal, state, and local student privacy and parental notification laws, rules, and policies.

3. Ensuring that Counselor to Student ratios are reasonable and as close as possible to the ratio of one school counselor for every 450 full-time equivalent students as provided in O.C.G.A. § [20-2-182\(c\)](#);

4. Ensuring all School Counseling Services align with the Georgia Professional Standards Commission's school counselor certification standards and state requirements.

**Cite as** Ga. Comp. R. & Regs. R. 160-4-8-.05

**AUTHORITY:** O.C.G.A § [20-2-182](#).

**HISTORY:** Original Rule entitled "Guidance Counselors" adopted. F. Aug. 14, 2000; eff. Sept. 3, 2000.

**Repealed:** New Rule entitled "School Counseling" adopted. F. Dec. 9, 2021; eff. Dec. 29, 2021.

# Department 300. RULES OF GEORGIA DEPARTMENT OF LABOR

## Chapter 300-2. EMPLOYMENT SECURITY LAW

### Subject 300-2-4. UNEMPLOYMENT INSURANCE BENEFIT PAYMENTS

#### 300-2-4-.08 Overpayments

(1) Waiver of Overpayments Generally.

(a) An individual shall be required to repay an overpayment of unemployment insurance benefits unless a timely application for waiver is filed and such repayment, in the discretion of the Commissioner or the Commissioner's designee, is determined to be inequitable under this rule and fault is not found to be attributable to that individual. Such determination shall not be appealable.

(b) A waiver of an unemployment insurance overpayment may not be granted if the request for such waiver is filed later than fifteen (15) calendar days following the release date of the Notice of Overpayment. Provided, however, that such time limitation may be extended, in the discretion of the Commissioner or the Commissioner's designee, upon a showing of extenuating circumstances which prevented the filing of a timely waiver request by the claimant and such circumstances were beyond the claimant's control.

(c) A waiver of an unemployment insurance overpayment may not be granted to any individual who has been expressly determined to have brought about such overpayment by the presentation of false or misleading statements or representations, whether or not such action has been determined fraudulent, when such individual could have or should have known such information presentation was false or misleading.

(d) A waiver of an unemployment insurance overpayment may be granted to an individual only if:

1. A timely application for waiver is filed;
2. Fault is not attributable to the individual, as outlined in paragraph (c) of this rule;
3. The individual provides, at the time of the individual's request for a waiver, satisfactory evidence of circumstances showing repayment would genuinely work a financial hardship on the individual; and
4. The individual provides, at the time of the individual's request for a waiver, satisfactory evidence that he or she has no reasonable prospect of future employment or ability to repay the overpayment in the future, due to age, disability, or other good cause.

(e) Financial hardship exists if recovery of the overpayment would result directly in the individual's loss of or inability to obtain the minimal necessities of food, medicine, and shelter for a substantial period of time and such circumstances may be expected to endure for the foreseeable future.

(f) A waiver of an unemployment insurance overpayment may be issued by the department in whole or in part upon the finding of a court of law having proper subject matter jurisdiction which rules that error existed in the information utilized to establish such overpayment, whether or not such overpayment was determined to be fraudulent in nature. Additionally, if a court finds repayment of an overpayment should be waived by virtue of discharge in bankruptcy granted under provision of Chapter 7 or Chapter 13 of the Bankruptcy Code, waiver will be granted.

(g) A waiver by the Commissioner of unemployment insurance overpayments cannot be granted when prohibited by federal law or regulation regardless of fault.

(2) Special Limited Waiver of COVID-19 Pandemic Related Overpayments.

(a) In the discretion of the Commissioner or the Commissioner's designee, an overpayment of regular state unemployment insurance benefits with respect to any claim week ending on or between March 21, 2020, and June 26, 2021, may be waived if:

1. The overpayment was caused by incorrect or no earnings reported on a partial claim filed by an employer;
2. Fault is not attributable to the claimant for the reporting of incorrect or no earnings on the partial claim;
3. The overpayment has not been repaid; and
4. Repayment would be inequitable, as defined in this special rule.

(b) In the sole discretion of the Commissioner or the Commissioner's designee, repayment shall be considered inequitable if:

1. It would cause financial hardship to the person for whom waiver is sought;
2. The recipient of the overpayment can show (regardless of their financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either they have relinquished a valuable right or changed positions for the worse; or
3. Recovery would be unconscionable under the circumstances.

(c) Anyone seeking an overpayment waiver under this special rule shall submit a written request for a waiver to the Department specifying in detail why repayment would be inequitable including supporting documentation.

(d) The Department will consider each individual's waiver request separately on its own merits, with due consideration of all the facts and circumstances of each individual case.

(e) This special limited waiver rule shall also apply to overpaid weeks of Pandemic Emergency Unemployment Compensation, State Extended Benefits, Federal Pandemic Unemployment Compensation, and Lost Wages Assistance, except when such a waiver would be prohibited by federal law and regulations.

**Cite as** Ga. Comp. R. & Regs. R. 300-2-4-.08

**AUTHORITY:** O.C.G.A. §§ [34-2-6\(a\)\(4\)](#), [34-8-70\(b\)](#), [34-8-254\(c\)](#), [34-8-197\(b\)](#); 15 U.S.C. §§ [9023\(f\)\(2\)](#); [9025\(e\)\(2\)](#); **Continued Assistance for Unemployed Workers Act of 2020 § 262(b)**.

**HISTORY:** Original Rule entitled "Waiver of Overpayments" adopted F. Aug. 28, 1992; eff. Sept. 17, 1992.

**Amended:** F. Jun. 25, 1998; eff. Jul. 15, 1998.

**Amended:** F. Jan. 10, 2012; eff. Jan. 30, 2012.

**Repealed:** New Rule entitled "Overpayments. Amended" adopted. F. Oct. 1, 2013; eff. Oct. 21, 2013.

**Amended:** F. Sep. 29, 2014; eff. Oct. 19, 2014.

**Amended:** F. Aug. 13, 2020; eff. Aug. 13, 2020, as specified by the Agency.

**Amended:** F. Feb. 9, 2021; eff. Mar. 1, 2021.

**Amended:** F. Dec. 28, 2021; eff. Jan. 1, 2022, as specified by the Agency.

# Department 480. RULES OF GEORGIA STATE BOARD OF PHARMACY

## Chapter 480-16. MISCELLANEOUS GUIDELINES FOR PHARMACISTS

### **480-16-.06 Theft, Loss, or Unaccounted for Controlled Substances**

(1) The theft, loss, or the discovery of unaccounted for controlled substances, within three (3) days of its discovery, must be reported to the GDNA.

(2) A written report must be made regarding any theft or significant loss, as defined under [21 C.F.R. 1301.76](#), of controlled substances by completing a DEA Form 106 and submitted to the Drug Enforcement Administration, with a copy to the GDNA.

(3) The report shall include the following information:

- (a) Full name and address of the pharmacy;
- (b) Pharmacy DEA registration number;
- (c) Date of theft, loss, or discovery of missing controlled substance;
- (d) Type of incident, i.e. theft, loss, etc.;
- (e) List of cost codes, or identification symbols on package stolen; and
- (f) List of the controlled substances missing.

**Cite as** Ga. Comp. R. & Regs. R. 480-16-.06

**AUTHORITY:** O.C.G.A. §§ [16-13-34](#), [26-4-27](#), [26-4-28](#), [26-4-112](#).

**HISTORY:** Original Rule entitled "Theft, Loss, or Unaccounted for Controlled Substances" adopted. F. Feb. 20, 2002; eff. Mar. 12, 2002.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

# Department 480. RULES OF GEORGIA STATE BOARD OF PHARMACY

## Chapter 480-27. REQUIREMENTS OF A PRESCRIPTION DRUG ORDER WHEN UTILIZING A COMPUTER OR OTHER ELECTRONIC MEANS

### 480-27-.09 Patient Records

(1) A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for filling or dispensing. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

(a) Full name of the patient for whom the drug is intended;

(b) Street address and telephone number of the patient;

(c) Patient's age or date of birth;

(d) The patient's gender;

(e) A list of all prescription drug orders obtained by the patient at the pharmacy maintaining the patient record during the two years immediately preceding the most recent entry showing the name of the drug, prescription number, name and strength of the drug, the quantity and date received, and the name of the practitioner; and

(f) Pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) The pharmacist shall make a reasonable effort to obtain from the patient or the patient's agent and shall record any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs, including over-the-counter drugs or devices currently being used by the patient which may relate to prospective drug review.

(3) A patient record shall be maintained for a period of not less than two years from the date of the last entry in the profile record. This record may be a hard copy or a computerized form.

**Cite as** Ga. Comp. R. & Regs. R. 480-27-.09

**AUTHORITY:** O.C.G.A. §§ [26-4-27](#), [26-4-28](#), [26-4-83](#).

**HISTORY:** Original Rule entitled "Patient Records" adopted. F. July 24, 2002; eff. Aug. 13, 2002.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

# Department 480. RULES OF GEORGIA STATE BOARD OF PHARMACY

## Chapter 480-37. REMOTE AUTOMATED MEDICATION SYSTEMS

### 480-37-.03 Minimum Requirements

Minimum Requirements. A pharmacy may use a RAMS provided that:

(a) The pharmacy has a policy and procedure manual at the skilled nursing facility or hospice that includes:

1. The type or name of each RAMS including a serial number or other identifying nomenclature.
2. A method to ensure security of a RAMS to prevent unauthorized access. Such method may include the use of electronic passwords, biometric identification (optic scanning or fingerprint) or other coded identification.
3. A process of filling and stocking a RAMS with drugs; an electronic or hard copy record of medication filled into the system including the product identification, lot number, and expiration date.
4. Documentation of inventory procedures including removal of any discontinued/outdated medications.
5. Compliance with a Continuous Quality Improvement Program.
6. A method to ensure that patient confidentiality is maintained.

(b) No more than a 30-day supply of each individual medication may be stocked in a RAMS at one time.

(c) All drugs in a RAMS must be inventoried no less than once every 30 days and documentation must be maintained of the inventories including the removal of any discontinued/out of date medications.

(d) All the registered pharmacists, licensed pharmacy interns or registered pharmacy technicians involved in the process of stocking, entering information into RAMS, or inventorying the RAMS must be identified. No person shall be permitted to perform a function related to the machine that they are not authorized to do in the pharmacy. Specifically, where direct supervision is required in the pharmacy, such supervision must occur in duties related to the RAMS.

(e) Patient confidentiality must be maintained.

(f) The PIC, or a pharmacist designated by the PIC, must be able to revoke, add, or change access to RAMS at any time.

(g) Only a Georgia registered nurse or a Georgia licensed practical nurse may be assigned to access and remove dangerous drugs from a RAMS.

(h) Only a Georgia registered nurse may access and remove controlled substances from a RAMS.

(i) The system ensures that each prescription is dispensed in compliance with the definition of dispense and the practice of the profession of pharmacy.

(j) The system shall maintain a readily retrievable electronic record to identify all pharmacists, pharmacy interns, or registered pharmacy technicians involved in the processing of the prescription order.

(k) A RAMS shall provide the ability to comply with product recalls generated by the manufacturer, distributor, or pharmacy. The system shall have a process in place to isolate affected lot numbers including an intermix of drug product lot numbers.

(l) The stocking or restocking of a dangerous drug or controlled substances shall be completed by:

1. A Georgia licensed pharmacist,

2. A Georgia licensed pharmacy intern/extern under the direct on-site supervision of a Georgia licensed pharmacist, or

3. A Georgia registered pharmacy technician only under the following circumstances:

a. If the remote automated medication system utilizes radio frequency identification or bar coding in the filling process, the pharmacy shall retain an electronic record of the filling activities of the pharmacy technician; or

b. If the remote automated medication system does not utilize radio frequency identification or bar coding in the filling process, a pharmacist shall supervise continuously the filling activities of the pharmacy technician through a two-way audiovisual system.

(m) A RAMS must use at least two separate verifications, such as bar code verification, electronic verification, weight verification, radio frequency identification (RFID) or similar process to ensure that the proper medication is being dispensed from a RAMS.

(o) All medication shall be packaged and labeled in compliance with Board rules and laws for patient specific labeled medication and/or unit of use medication.

(p) The licensed pharmacist responsible for filling, verifying, or loading the RAMS shall be responsible for their individual action.

(q) A prescription drug dispensed by the RAMS pursuant to the requirements of this rule shall be deemed to have been certified by the pharmacist.

(r) A licensed pharmacist may remove discontinued and/or outdated medications from the RAMS and return such medications to the licensed pharmacy for proper disposition. A registered or licensed practical nurse may remove discontinued and/or outdated medications and place them in the designated secured return bin in a RAMS.

**Cite as** Ga. Comp. R. & Regs. R. 480-37-.03

**AUTHORITY:** O.C.G.A. §§ [26-4-5](#), [26-4-27](#), [26-4-28](#), [26-4-80](#), [26-4-110](#).

**HISTORY:** Original Rule entitled "Minimum Requirements" adopted. F. Feb. 24, 2012; eff. Mar. 15, 2012.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

# Department 480. RULES OF GEORGIA STATE BOARD OF PHARMACY

## Chapter 480-48. DELIVERY BY MAIL

### 480-48-.01 Definitions

For purposes of this chapter of the Rules and Regulations, the following definitions apply:

(a) "Board" shall mean the Georgia Board of Pharmacy.

(b) "Delivery by Mail" or "delivered by mail" or "delivery by mail" shall mean delivery to a patient or the patient's designee by the United States Postal Service or by a commercial common carrier from the pharmacy which fills the prescription.

(c) "Delivery by Pharmacy" shall mean delivery directly to a patient or patient's designee from the pharmacy by contract or private carrier or by an employee of the pharmacy.

(d) "Mail order pharmacy" shall mean a pharmacy that uses delivery by mail as a means of delivery of a prescription drug to a patient or the patient's designee.

(e) "Pharmacy" means a pharmacy holding a current Board issued license to operate a pharmacy in Georgia and nonresident pharmacy permit holders.

**Cite as** Ga. Comp. R. & Regs. R. 480-48-.01

**AUTHORITY:** O.C.G.A. §§ [26-4-5](#), [26-4-27](#), [26-4-28](#), [26-4-60](#), [26-4-80](#), [26-4-85](#), [26-4-110](#), [26-4-114.1](#).

**HISTORY:** Original Rule entitled "Definitions" adopted. F. Sep. 22, 2014; eff. Oct. 12, 2014.

**Amended:** F. May 14, 2015; eff. June 3, 2015.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

**Department 480. RULES OF GEORGIA STATE BOARD OF  
PHARMACY**

**Chapter 480-49. DEFAULT ON OBLIGATIONS**

**480-49-.01 [Repealed]**

**Cite as** Ga. Comp. R. & Regs. R. 480-49-.01

**AUTHORITY:** O.C.G.A. §§ [26-4-60](#), [43-1-29](#).

**HISTORY:** Original Rule entitled "Federal Student Loan Default" adopted. F. June 29, 2015; eff. July 19, 2015.

**Repealed:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

# Department 505. PROFESSIONAL STANDARDS COMMISSION

## Chapter 505-2. CERTIFICATION

### 505-2-.90 Career and Technical Specializations

(1) **Summary:** Career and Technical Specializations are one part of the larger area of education curriculum known as Career, Technical and Agricultural Education (CTAE). Career and Technical Specializations certification is based on a combination of occupational experience, industry licensing and assessments, and formal study. Upon the receipt of a Provisional certificate, the individual must affiliate with and complete a GaPSC-approved program offered as New Teacher Institute (NTI) or Georgia Teacher Academy for Preparation and Pedagogy (GATAPP) program in order to convert to the Induction or Professional certificate.

(2) **Areas of Specialization.** The following Career and Technical Specializations are offered:

- a. Architectural Drawing and Design
- b. Audio/Video Technology& Film
- c. Automotive Service Technology
- d. Aviation
- e. Barbering
- f. Collision Repair
- g. Computer Animation
- h. Construction
- i. Cosmetology
- j. Culinary Arts
- k. Distribution & Logistics
- l. Electronics Technology
- m. Esthetics
- n. Government and Public Administration
- o. Granite Technology
- p. Graphic Communications & Design
- q. Health Information Technology
- r. Information Technology
- s. Law, Public Safety, Corrections and Security

t. Manufacturing and Engineering Sciences

u. Marine Service Technology

v. Nails

w. Precision Machine Technology

x. Sheet Metal

y. Welding Technology

**(3) Provisional Requirements (For Individuals Transitioning to a Career in Education).**

(a) Issuance.

1. Pass the GACE Educator Ethics Assessment.

2. Have at least two (2) years of occupational work experience in the area of specialization.

(i) The fields of Aviation-Flight Operations, Computer Animation and Electronics Technology have options that do not require occupational work experience. Please refer to the chart of licensure options [HERE](#).

3. Satisfy minimum degree requirements and industry testing and/or licensure, which may be found [HERE](#).

(i) With the exception of the specializations in (I) below, individuals meeting all other requirements except industry testing and/or licensure may be issued a Provisional certificate. For those who do not meet the licensure requirement, it must be satisfied prior to conversion of the Provisional Certificate.

(I) The following fields require industry licensure for issuance of the initial Provisional Certificate: Barbering, Esthetics, Cosmetology, and Nails.

4. Have the certificate requested by the employing Georgia local unit of administration following procedures outlined in Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

(b) The Provisional certificate will be issued for one (1) year pending verification of enrollment in a GaPSC-accepted educator preparation program leading to certification in the area of specialization held by the educator. Once enrolled in a GaPSC-accepted program, the certificate will be extended for two additional years (See GaPSC Rule [505-2-.08](#) PROVISIONAL CERTIFICATE).

(c) Conversion.

1. Complete a GaPSC-accepted program in the area of specialization of issuance.

2. Meet the following Special Georgia Requirements:

(i) Pass or exempt the GACE Program Admission Assessment.

(ii) Satisfy the Special Education requirement with a grade of B or better.

(iii) Have passed the GACE Educator Ethics Assessment.

3. Hold an associate's degree or higher.

(i) If all requirements in (3)(c) above have been completed with the exception of the associate's degree, the local unit of administration may request a second Provisional certificate.

4. Apply for conversion following procedures outlined in Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

(d) The Standard Professional certificate or Performance-Based certificate will be issued based on meeting experience requirements outlined in GaPSC Rule [505-2-.05](#) PROFESSIONAL CERTIFICATE.

(4) **Induction Requirements** (See GaPSC Rule [505-2-.04](#) INDUCTION CERTIFICATE).

(a) Five (5)-year Induction (For Individuals Lacking Teaching Experience to Qualify for Professional Certification).

1. Issuance.

(i) Hold the appropriate degree level from a GaPSC accepted accredited institution in the area of specialization, which may be found [HERE](#).

(ii) Verify completion of a GaPSC-accepted program in the area of specialization, hold a valid or expired professional certificate in the field from another state; or verify completion of a GaPSC-accepted program in the field from another country.

(I) For individuals who completed a GaPSC-approved program in the field, pass or exempt the GACE Program Admission Assessment is required.

(iii) Have passed the GACE Educator Ethics Assessment.

(iv) Have less than three (3) years of successful teaching experience while holding a professional certificate.

(v) Apply for certification following procedures outlined in GaPSC Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

2. Conversion.

(i) Earn three years of successful experience.

(ii) For individuals applying based on reciprocity or completion of a GaPSC-accepted program from another state or country, satisfy the following requirement:

(I) Satisfy the Special Education requirement with a grade of B or better.

(iii) Apply for conversion following procedures outlined in Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

3. The Standard Professional certificate or Performance-Based certificate will be issued based on meeting experience requirements outlined in GaPSC Rule [505-2-.05](#) PROFESSIONAL CERTIFICATE.

(b) Three (3)-Year Induction (Teaching Out-of-Field).

1. Issuance.

(i) Hold a valid Five (5)-Year Induction certificate in any teaching field.

(ii) Hold the appropriate degree level from a GaPSC-accepted accredited institution in the area of specialization, which may be found [HERE](#).

(iii) Have at least (2) years of occupational work experience in the field.

(iv) Have the certificate requested by the employing Georgia local unit of administration following procedures outlined in GaPSC Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

2. Conversion.

(i) Satisfy an industry testing and/or hold licensure in the field, which may be found [HERE](#);

(ii) Apply for conversion following procedures outlined in GaPSC Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

3. The Standard Professional certificate or Performance-Based certificate will be issued based on meeting experience requirements outlined in GaPSC Rule [505-2-.05](#) PROFESSIONAL CERTIFICATE.

**(5) Professional Requirements.**

(a) Issuance.

1. Hold the appropriate degree level from a GaPSC-accepted accredited institution in the area of specialization, which may be found [HERE](#).

2. Verify completion of a GaPSC-accepted program in the area of specialization, hold a valid or expired professional certificate in the field from another state; or verify completion of a GaPSC-accepted program in the field from another country.

(i) Have a minimum of three (3) years of successful experience while holding a Professional certificate.

3. Apply for certification following procedures outlined in GaPSC Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

(b) Renewal.

1. Verify completion of requirements outlined in the renewal rule (See GaPSC Rule [505-2-.36](#) RENEWAL REQUIREMENTS).

2. Individuals applying based on reciprocity or completion of a program out-of-state or out-of-country must satisfy the Special Education requirement with a grade of B or better as part of renewal requirements.

(c) The Standard Professional certificate or Performance-Based certificate will be issued based on meeting experience requirements outlined in GaPSC Rule [505-2-.05](#) PROFESSIONAL CERTIFICATE.

**(6) Non-Renewable Professional Requirements.**

(a) One-year Non-Renewable Professional (Issued to individuals who have not completed renewal requirements).

1. Issuance.

(i) Hold an expired professional Georgia certificate in the field.

(ii) Have the certificate requested by the employing Georgia local unit of administration following procedures outlined in Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

2. Conversion.

(i) Verify completion requirements outlined in the renewal rule. (See GaPSC Rule [505-2-.36](#) RENEWAL REQUIREMENTS)

(ii) Apply for conversion following procedures outlined in Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

3. The Standard Professional certificate or Performance-Based certificate will be issued based on meeting experience requirements outlined in GaPSC Rule [505-2-.05](#) PROFESSIONAL CERTIFICATE.

(b) Three (3)-year Non-Renewable Professional.

1. Issuance.

(i) Hold a valid Five (5)-Year Professional certificate.

(ii) Meet the minimum education level required for the area of specialization, which may be found [HERE](#).

(iii) Have at least (2) years of occupational work experience in the area of specialization or the GaPSC-determined equivalent.

(iv) Have the certificate requested by the employing Georgia local unit of administration following procedures outlined in GaPSC Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

2. Conversion.

(i) Satisfy an industry testing and/or hold licensure in the field, which may be found [HERE](#).

(ii) Apply for conversion following procedures outlined in Rule [505-2-.27](#) CERTIFICATION AND APPLICATION PROCEDURES.

3. The Standard Professional certificate or Performance-Based certificate will be issued based on meeting experience requirements outlined in GaPSC Rule [505-2-.05](#) PROFESSIONAL CERTIFICATE.

(7) **Permit** (See GaPSC Rule [505-2-.10](#) PERMIT).

(8) **To Add the Field** (See GaPSC Rule [505-2-.34](#) ADD A FIELD).

(a) To add a Career and Technical Specialization to a renewable professional teaching certificate, the applicant must meet the minimum education level required for the area of specialization (which may be found [HERE](#)), hold the industry testing and licensure required for the area of specialization outlined in section (3)(a) above, and have at least two (2) years of occupational work experience in the area of specialization or the GaPSC-determined equivalent.

(9) **To Upgrade the Level** (See GaPSC Rule [505-2-.33](#) CERTIFICATE UPGRADE).

(10) **Renewal Requirements** (See GaPSC Rule [505-2-.36](#) RENEWAL REQUIREMENTS).

(11) **In-Field Statement.** Individuals certified in Career and Technical Specializations are in-field to teach specified Georgia curriculum courses in grades 6-12. Each state-approved curriculum course, with specified certificate fields that are designated as in-field, may be found under Certification/Curriculum Assignment Policies (CAPs) on the GaPSC web site at [www.gapsc.com](http://www.gapsc.com).

**Cite as** Ga. Comp. R. & Regs. R. 505-2-.90

**AUTHORITY:** O.C.G.A. § [20-2-200](#).

**HISTORY:** Original Rule entitled "Latin" adopted. F. Dec. 18, 1991; eff. Jan. 7, 1992.

**Repealed:** New Rule entitled "Russian" adopted. F. Dec. 16, 1992; eff. Jul. 1, 1993, as specified by the Agency.

**Amended:** F. Jun. 21, 1996; eff. Jul. 11, 1996.

**Repealed:** New Rule of same title adopted. F. Feb. 20, 2004; eff. Mar. 15, 2004, as specified by the Agency.

**Repealed:** New Rule entitled "Trade and Industrial Education" adopted. F. June 11, 2014; eff. July 1, 2014, as specified by the Agency.

**Amended:** Title changed to "Career and Technical Specializations." F. Oct. 7, 2014; eff. Oct. 15, 2014, as specified by the Agency.

**Amended:** F. May 22, 2015; eff. June 15, 2015, as specified by the Agency.

**Amended:** F. May 25, 2016; eff. June 15, 2016, as specified by the Agency.

**Amended:** F. Sep. 26, 2016; eff. Oct. 15, 2016, as specified by the Agency.

**Amended:** F. Apr. 10, 2018; eff. Apr. 15, 2018, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Dec. 13, 2019; eff. Jan. 1, 2020, as specified by the Agency.

**Amended:** F. June 11, 2020; eff. July 1, 2020, as specified by the Agency.

**Amended:** F. Dec. 11, 2020; eff. Jan. 1, 2021, as specified by the Agency.

**Amended:** F. Dec. 14, 2021; eff. Jan. 1, 2022, as specified by the Agency.

## **505-2-.173 Reading Endorsement**

### **(1) Eligibility Requirements.**

(a) To be eligible for the professional Reading Endorsement, the applicant must hold a level four (4) or higher renewable professional certificate in any teaching, service or leadership field and complete other requirements outlined in GaPSC Rule [505-2-.14](#) ENDORSEMENTS.

(i) A Three (3)-Year Non-Renewable professional may be issued upon the request of a Georgia local unit of administration (LUA) to an individual holding a professional certificate and assigned to teach reading while completing a GaPSC-approved Reading Endorsement program.

(b) To be eligible for the Five-Year Induction Reading Endorsement, the applicant must hold a level four (4) or higher Five-Year Induction certificate in any teaching field and complete other requirements outlined in GaPSC Rule [505-2-.14](#) ENDORSEMENTS.

(i) A Three (3)-Year Induction may be issued upon the request of a Georgia local unit of administration (LUA) to an individual holding the Five-Year Induction and assigned to teach reading while completing a GaPSC-approved Reading Endorsement program.

**(2) In-Field Statement (See GaPSC Rule [505-2-.40](#) IN-FIELD ASSIGNMENT).** An individual with the Reading Endorsement is in-field to teach reading in grades P-12.

(a) Each state-approved curriculum course, with specified certificate fields that are designated as in-field, may be found under Certification/Curriculum Assignment Policies (CAPS) on the GaPSC web site at [www.gapsc.com](http://www.gapsc.com).

**Cite as** Ga. Comp. R. & Regs. R. 505-2-.173

**AUTHORITY:** O.C.G.A. § [20-2-200](#).

**HISTORY:** Original Rule entitled "Special Education Transition Specialist Endorsement" adopted. F. Oct. 22, 2004; eff. Nov. 15, 2004, as specified by the Agency.

**Repealed:** New Rule entitled "Reading Endorsement" adopted. F. Jun. 11, 2014; eff. Jul. 1, 2014, as specified by the Agency.

**Amended:** F. Dec. 14, 2021; eff. Jan. 1, 2022, as specified by the Agency.

# Department 505. PROFESSIONAL STANDARDS COMMISSION

## Chapter 505-3. EDUCATOR PREPARATION RULES

### 505-3-.01 Requirements and Standards for Approving Educator Preparation Providers and Educator Preparation Programs

(1) **Purpose.** This rule states requirements and standards for the approval of educator preparation providers (EPPs) and programs for the initial and continuing preparation of educators in Georgia.

(2) **Definitions.**

(a) Accreditation: (1) A process for assessing and enhancing academic and educational quality through external, often voluntary, peer review. (2) A decision awarded and process certified by an accrediting organization. For the purposes of educator preparation provider (EPP) and program approval, GaPSC recognizes three (3) types of accreditation: Regional Accreditation, National Accreditation, and Specialized Accreditation. Each type of accreditation is defined in subsequent definitions.

(b) Administrative Approval: A process used in lieu of the Developmental Approval Review exclusively for endorsement programs and available only to GaPSC-approved EPPs. Administrative approval involves a staff review of an approval application and a curriculum map in which key assessments are described and mapped to program content standards. After an endorsement program is administratively approved, it will be reviewed against all applicable standards in the EPP's next Continuing Approval Review.

(c) Advanced Preparation/Degree-Only Program: An educator preparation program at the post-baccalaureate level for the continuing education of educators who have previously completed initial preparation and are certified in the program's subject area or field of certification. Advanced preparation programs commonly award graduate credit and include master's, specialist, and doctoral degree programs.

(d) Approval: A process for assessing and enhancing academic and educational quality through peer review and annual reporting, to assure the public an EPP and/or program has met and continues to meet institutional, state, and national standards of educational quality; also, a Georgia Professional Standards Commission (GaPSC) decision rendered when an EPP or program meets GaPSC standards and annual reporting requirements.

(e) Approval Review: Examination of evidence and interviews of stakeholders conducted by GaPSC site visitors and sometimes CAEP site visitors either on-site at an institution/agency, or electronically through the use of Internet and telephone conferencing systems as part of a Developmental, First Continuing, Continuing, Focused, or Probationary Review. Although not an approval review, the Substantive Change process is used when certain changes are made to the design or operations of approved program (see definition at).

(f) B/P-12: Formerly P-12, the term *B/P-12* references schools serving children aged birth to grade 12.

(g) Branch Campus: A campus that is physically detached from the parent university or college and has autonomous governance. A branch campus generally has full student and administrative services with a CEO and is regionally accredited separately from the parent campus. For approval purposes, GaPSC considers branch campuses distinct from the parent institution and therefore a separate EPP. For approval purposes, a branch campus located in the state of Georgia having an original, or main, campus located in another state or country is considered an out-of-state institution and is therefore ineligible to seek GaPSC approval as an EPP.

(h) Candidates/Teacher Candidates: Individuals enrolled in programs for the initial or advanced preparation of educators, programs for the continuing professional development of educators, or programs for the preparation of other professional school personnel. Candidates are distinguished from students in B/P-12 schools. (The term *enrolled* is used in the GaPSC approval process to mean the candidate is admitted and taking classes.)

(i) Clinical Educators: All educator preparation provider (EPP) and P-12 school-based individuals, including classroom teachers, who assess, support, and develop a candidate's knowledge, skills, or professional dispositions at some stage in the clinical experiences. The term *Clinical Educators* is intended to be inclusive of the roles of Mentor Teacher, B/P-12 Supervisor, and Faculty Supervisor. EPPs are expected to clearly define the roles and responsibilities of all clinical educators with whom candidates interact.

(j) Clinical Practice: Culminating residency (formerly referred to as *student teaching*) or internship experiences with candidates placed in classrooms for at least one (1) full semester where they experience intensive and extensive practices in which they are fully immersed in the learning community and provided opportunities to develop and demonstrate competence in the professional roles for which they are preparing. In initial preparation programs in Service and Leadership fields, candidates will complete such culminating residency or internship experiences in placements that allow the knowledge, skills, and dispositions included in the programs to be practiced and applied. In non-traditional preparation programs, such as GaTAPP, clinical practice is job-embedded as candidates must be hired as a classroom teacher to be admitted to the program.

(k) Content Knowledge: The central concepts, tools of inquiry, and structures of a discipline (Source: CAEP Glossary).

(l) Council for the Accreditation of Educator Preparation (CAEP): The national accreditation organization formed as a result of the unification of the National Council for the Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC). CAEP advances excellence in educator preparation through evidence-based accreditation that assures quality and supports continuous improvement to strengthen B/P-12 student learning. CAEP accredits educator preparation providers (EPPs).

(m) Dispositions: Moral commitments and professional attitudes, values, and beliefs that underlie educator performance and are demonstrated through both verbal and non-verbal behaviors as educators interact with students, families, colleagues, and communities.

(n) Distance Learning: A formal educational process in which instruction occurs when candidates and the instructor are not in the same place at the same time. Distance learning can occur through virtually any media including asynchronous or synchronous, electronic or printed communications.

(o) Distance Learning Program: A program delivered primarily (50% or more contact hours) through distance technology in which the instructor of record and candidates lack face-to-face contact and instruction is delivered asynchronously or synchronously (see definition n). These preparation programs include those offered by the EPP through a contract with an outside vendor or configured as a consortium with other EPPs, as well as those offered solely by the provider.

(p) Diverse: Showing a great deal of variety; very different, as in clinical placement (see definition q) (Source: CAEP Glossary).

(q) Diversity: Diversity is inclusive of individual differences and group differences. (1) Individual differences (e.g., personality, interests, learning modalities, and life experiences); and (2) group differences (e.g., race, ethnicity, ability, gender identity, gender expression, sexual orientation, nationality, language, religion, political affiliation, and socio-economic background) (Source: CAEP Glossary).

(r) Dyslexia and Other Related Disorders: Dyslexia is a specific learning disability that is neurological in origin, which is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge. Other related disorders include aphasia, dyscalculia, and dysgraphia.

1. **Aphasia:** Aphasia is a condition characterized by either partial or total loss of the ability to communicate verbally or through written words. A person with aphasia may have difficulty speaking, reading, writing, recognizing the names of objects, or understanding what other people have said. The condition may be temporary or permanent and shall not include speech problems caused by loss of muscle control.

2. **Dyscalculia:** Dyscalculia is the inability to understand the meaning of numbers, the basic operations of addition and subtraction, or the complex operations of multiplication and division or to apply math principles to solve practical or abstract problems.

3. **Dysgraphia:** Dysgraphia is difficulty in automatically remembering and mastering the sequence of muscle motor movements needed to accurately write letters or numbers.

(s) **Educator Preparation Program:** A planned sequence of courses and experiences for preparing B/P-12 teachers and other professional school personnel. The three (3) types of educator preparation programs are described in definitions ac (Initial), u (Endorsement), and c (Advanced/Degree-Only).

(t) **Educator Preparation Provider (EPP):** The institution of higher education (IHE), college, school, department, agency, or other administrative body responsible for managing or coordinating all programs offered for the initial and continuing preparation of teachers and other school personnel, regardless of where these programs are administratively housed (formerly referred to as the professional education unit).

(u) **Endorsement Program:** A planned sequence of courses and experiences, typically three (3) to four (4) courses in length, designed to provide educators with an additional, specific set of knowledge and skills, or to expand and enhance existing knowledge and skills. Successful completion of an endorsement program results in the addition of the endorsement field to the Georgia educator certificate designating expertise in the field. Endorsement programs may be offered as non-credit bearing programs (or if applicable, as continuing education units), or they may lead to college credit; they must be approved by the GaPSC and administered by a GaPSC-approved EPP, and may be offered as either a stand-alone program or, unless otherwise specified in GaPSC Educator Preparation Rules [505-3-.82](#) through [505-3-.115](#), embedded in an initial preparation program. Depending on the needs of the individual educator, endorsement programs may also be included as a part of an educator's professional learning plan/goals. See GaPSC Rule [505-2-.14](#), ENDORSEMENTS.

(v) **Field Experiences:** Activities that include organized and sequenced engagement of candidates in settings providing opportunities to observe, practice, and demonstrate the knowledge, skills, and dispositions delineated in institutional, state, and national standards. The experiences must be systematically designed and sequenced to increase the complexity and levels of engagement with which candidates apply, reflect upon, and expand their knowledge and skills. Since observation is a less rigorous method of learning, emphasis should be on field experience sequences requiring active professional practice or demonstration, and including substantive work with B/P-12 students and B/P-12 personnel as appropriate. In non-traditional preparation programs, such as GaTAPP, field experiences occur outside candidates' classrooms with students with diverse learning needs and varied backgrounds in at least two (2) settings during the clinical practice.

(w) **First Continuing Review:** Formerly called the *Initial Performance Review*, the First Continuing Review is conducted three (3) to four (4) years after a Developmental Review to determine if the EPP and/or initial educator preparation program(s) have evidence of meeting all applicable standards.

(x) **Franchise Program:** An endorsement program developed by and approved for a GaPSC-approved EPP (the franchise manager) and subsequently shared with other GaPSC-approved EPPs operating as franchisees.

(y) **Georgia Teacher Academy for Preparation and Pedagogy (GaTAPP):** Georgia's non-traditional preparation program for preparing career changers for certification as B/P-12 teachers. See GaPSC Rule [505-3-.05](#), GEORGIA TEACHER ACADEMY FOR PREPARATION AND PEDAGOGY (GaTAPP).

(z) **Grade Point Average (GPA):** A quantitative indicator of candidate achievement. Letter grades are converted to numbers and averaged over a period of time.

(aa) **Induction:** (1) The formal act or process of placing an individual into a new job or position and providing appropriate support during the first three (3) years of employment. The Georgia Department of Education defines The Induction Phase Teacher as any teacher who has been hired into a new permanent position in any Georgia school. (2) A Georgia level of professional educator certification; for additional information see Rule 505-2-04, INDUCTION CERTIFICATE.

(ab) **Information Literacy:** An intellectual framework for understanding, finding, evaluating, and using information — activities which may be accomplished in part by fluency with information technology, in part by sound investigative methods, but most importantly, through critical discernment and reasoning (adopted from The Association of College and Research Libraries).

(ac) **Initial Preparation Program:** A program designed to prepare candidates for their first professional certificate in a teaching, leadership, or service field. Examples include degree programs at the baccalaureate, master's, or higher levels; or post-baccalaureate programs, non-degree certification-only programs, and non-traditional programs such as the GaTAPP program. Programs leading to an educator's first certificate in a particular field are considered initial preparation even if the educator is certified in one or more other fields.

(ad) **Local Unit of Administration (LUA):** A local education agency, including but not limited to public, waiver, Investing in Educational Excellence (IE2), charter schools and private schools (e.g., faith-based schools, early learning centers, hospitals, juvenile detention centers, etc.). As referenced in GaPSC Certification Rule [505-2-.01](#), GEORGIA EDUCATOR CERTIFICATION, paragraph (2) (d) 1, for employment purposes GaPSC Certification Division staff consider all non-IHEs as LUAs.

(ae) **Media Literacy:** The ability to encode and decode the symbols transmitted via media and the ability to access, analyze, evaluate, and communicate information in a variety of forms, including print and non-print messages. Also known as the skillful application of literacy skills to media and technology messages (adopted from the National Association for Media Literacy Education).

(af) **Mentor Teacher:** A B/P-12 employed teacher and an expert practitioner who supports the development of a pre-service or novice teacher by assessing and providing feedback on instructional practice; interactions with students, colleagues, and parents; classroom management; and professionalism. Mentor teachers are typically involved with faculty supervisors in the formal supervision and evaluation of pre-service clinical practice experiences (residency/internship). The term *Mentor Teacher* is often used synonymously with the terms *Cooperating Teacher* and *B/P-12 Supervisor*. The terms *B/P-12 Supervisor* and *Faculty Supervisor* are described in definition au.

(ag) **National Accreditation:** National accreditation is conducted by an accrediting organization which develops evaluation criteria and conducts peer evaluations to assess whether or not those criteria are met. National accrediting agencies operate throughout the country and review entire institutions, EPPs, or programs in specific content fields. The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) is an example of a national accrediting organization that reviews institutions. CAEP (see definition l) is an example of a national accrediting organization that reviews EPPs. The National Association of Schools of Music (NASM) is an example of a national accrediting organization that reviews programs in a specific field.

(ah) **Nationally Recognized Program:** A program that has met the standards of a national specialized professional association (SPA) that is a constituent member of CAEP. The term *National Recognition* signifies the highest level of SPA recognition awarded to programs.

(ai) **Non-traditional Preparation Program (GaTAPP):** A program designed to prepare individuals who at admission hold an appropriate degree with verified content knowledge through a major or its equivalent in the content field or a passing score on the state-approved content assessment in the content field. If the state-approved content knowledge was not required at admission, it must be passed for program completion. Non-traditional preparation programs do not lead to a degree or college credit and:

1. Feature a flexible timeframe for completion;

2. Are job-embedded, allowing candidates to complete requirements while employed by a regionally accredited local unit of administration (school district or private school), a charter school approved by the Georgia State Charter School Commission, or a charter school approved by the Georgia Department of Education as a classroom teacher full-time or part-time for at least a half day;
3. Require that candidates are supported by a Candidate Support Team;
4. Require an induction component that includes coaching and supervision;
5. Provide curriculum, performance-based instruction and assessment focused on the pedagogical knowledge, skills, and dispositions necessary for the candidate to teach his/her validated academic content knowledge; and
6. Are individualized based on the needs of each candidate with respect to content knowledge, pedagogical skills, learning modalities, learning styles, interests, and readiness to teach. See Rule [505-3-.05](#), GEORGIA TEACHER ACADEMY FOR PREPARATION AND PEDAGOGY (GaTAPP).

(aj) Out-of-State Institution: An institution of higher education administratively based in a state within the United States other than Georgia, or another country.

(ak) Pedagogical Content Knowledge: A core part of content knowledge for teaching that includes: core activities of teaching, such as determining what students know; choosing and managing representations of ideas; appraising, selecting and modifying textbooks; and deciding among alternative courses of action and analyzing the subject matter knowledge and insight entailed in these activities (Source: adapted from the CAEP Glossary).

(al) Pedagogical Knowledge: The broad principles and strategies of classroom instruction, management, and organization that transcend subject matter knowledge (Source: CAEP Glossary).

(am) Pedagogical Skills: An educator's abilities or expertise to impart the specialized knowledge/content and skills of their subject area(s) (Source: CAEP Glossary).

(an) Preconditions: Fundamental requirements that undergird the GaPSC standards that must be met as a first step in the approval process and before an EPP is permitted to schedule a Developmental Approval Review.

(ao) Preparation Program Effectiveness Measures (PPEMs): A set of common measures applied to all teacher and leader preparation programs leading to initial certification in a field. Teacher Preparation Program Effectiveness Measures (TPPEMs) and Leader Preparation Program Effectiveness Measures (LPPEMs) are further defined in GaPSC Rule [505-3-.02](#), EDUCATOR PREPARATION PROVIDER ANNUAL REPORTING AND EVALUATION.

(ap) Program Completer: A person who has met all the requirements of a GaPSC-approved or state-approved out-of-state educator preparation program.

(aq) Regional Accreditation: Regional accreditation is conducted by an accrediting organization that develops evaluation criteria and conducts peer evaluations to assess whether or not those criteria are met. Six (6) regional accreditors operate in the United States to conduct educational accreditation of public, private, for-profit, and not-for-profit schools, colleges, and universities in their regions. The Southern Association of Colleges and Schools (SACS) is the regional accreditor for the southern region. The SACS accrediting organization for P-12 schools is the Council on Accreditation and School Improvement (SACSCASI), also known as Cognia. The SACS accrediting organization for institutes of higher education is the Commission on Colleges (SACSCOC).

(ar) Specialized Accreditation: Specialized accrediting organizations operate throughout the country to review programs and some single-purpose institutions. Like national and regional accreditors, specialized accreditation organizations develop evaluation criteria and conduct peer evaluations to assess whether or not those criteria are met.

(as) Specialized Professional Association (SPA): A constituent member of CAEP representing a particular disciplinary area that develops standards for the approval of educator preparation programs in that area and reviews programs for compliance with those standards.

(at) Substantive Change Procedure: Process used for EPPs to submit changes that are considered significant, including additional levels of program offerings and changes to key assessments or leadership personnel.

(au) Supervisor: An individual involved in the oversight and evaluation of educator preparation candidates during field and clinical experiences. In most cases one or more individuals are involved in the formal supervision of clinical experiences — a supervisor employed by the EPP and one or more supervisors employed by the B/P-12 site hosting a pre-service educator. The term *Faculty Supervisor* refers to the employee of the EPP and the term *B/P-12 Supervisor* (sometimes referred to as Mentor Teacher or Cooperating Teacher) refers to the school-based employee who hosts a pre-service educator for the culminating residency or internship.

(av) Technology Literacy: Using technology as a tool to research, organize, evaluate, and communicate information and understanding the ethical and legal issues surrounding the access and use of information.

(aw) Traditional Preparation Program: A credit-bearing program designed for the preparation of educators typically offered by institutes of higher education.

(ax) Year-long Residency: An extended clinical practice lasting the entire length of the B/P-12 school year, in the same school, in which candidates have more time to practice teaching skills with students under the close guidance of experienced and effective B/P-12 teachers licensed in the content area the candidate is preparing to teach. Candidates fully participate in the school as a member of the faculty, including faculty meetings, parent conferences, and professional learning activities spanning, if feasible, the beginning (e.g. pre-planning) and ending (post-planning) of the academic year. (Candidates may participate in post-planning at the end of the junior year if it is not possible for them to participate at the end of the senior year). These extended residencies also include supervision and mentoring by a representative of the preparation program who, along with the B/P-12 supervisor, ensures the candidate is ready for program completion and is eligible for state certification.

### **(3) GENERAL REQUIREMENTS APPLICABLE TO ALL EDUCATOR PREPARATION PROVIDERS AND EDUCATOR PREPARATION PROGRAMS.**

#### **(a) Authorization for the Establishment of Georgia Educator Preparation Providers (EPPs)**

1. The following types of organizations administratively based in the state of Georgia (as determined by the location of the office of the President or the single highest ranking executive officer of the institution/agency/organization) are eligible to seek GaPSC approval as an EPP for the purpose of preparing educators: Regionally accredited institutions of higher education; regionally accredited local units of administration with student enrollment over 30,000; Regional Educational Service Agencies (RESAs); and other education service organizations. Out-of-state entities of any kind (e.g., institutions, agencies, associations, non-profit or for-profit organizations, or other types of organizations) operating in the state of Georgia through a branch or satellite campus or by online delivery of programs are not eligible to seek GaPSC approval.

#### **(b) Accreditation of Institutions/Agencies with an Educator Preparation Provider (EPP)**

1. Institutions of higher education with a college, school, department or other entity that is a GaPSC-approved EPP shall be fully accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), at the level(s) of degree(s) granted by the institution. The institution shall submit program(s) for GaPSC approval corresponding to the appropriate level of accreditation and in a field recognized for certification by the GaPSC. If an institution has submitted an application for change in degree level to a GaPSC-accepted regional accreditation agency, and is seeking Developmental Approval of a program(s) at the proposed new degree level by the GaPSC, the institution must be regionally accredited at the new degree level prior to approval review by the GaPSC. See GaPSC [505-2-.31](#), GaPSC-ACCEPTED ACCREDITATION; VALIDATION OF NON-ACCREDITED DEGREES.

2. Local education agencies, RESAs, or other approved, non-IHE providers shall admit candidates who hold degrees from a GaPSC-accepted accredited institution of higher education appropriate for the certificate sought. GaPSC-approved EPPs offering Career Technical and Agricultural Education (CTAE) programs, including GaTAPP providers, may admit individuals who do not hold post-secondary degrees who are seeking CTAE certification in certain fields (see Rule [505-3-.05](#), GEORGIA TEACHER ACADEMY FOR PREPARATION AND PEDAGOGY). See Rule [505-2-.31](#), GaPSC-ACCEPTED ACCREDITATION; VALIDATION OF NON-ACCREDITED DEGREES for a list of acceptable accrediting agencies.

(c) GaPSC Approval of Educator Preparation Providers (EPPs)

1. An education institution or agency's EPP (e.g., college/school/department of education) and/or program(s) shall be approved by its governing board prior to seeking GaPSC approval for the first time (Developmental Approval). Once an EPP is approved, subsequent submission of programs for approval may be made as long as governing board approval is in process and completed 45 days prior to the GaPSC program approval review.

2. GaPSC approval standards for EPPs and programs shall at a minimum be adapted from the most recent version of the standards of the Council for the Accreditation of Educator Preparation (CAEP).

3. EPPs administratively based in the state of Georgia for which GaPSC has regulatory authority may choose to seek and/or maintain CAEP Accreditation. If the accreditation visit was conducted jointly by GaPSC and CAEP, the GaPSC will accept CAEP Accreditation of an EPP and the EPP shall be recognized as approved by GaPSC until the end of the seven (7)-year approval cycle, or for a shorter period of time if, during the seven (7)-year cycle GaPSC action is necessitated by persistently low (Low Performing) Preparation Program Effectiveness Measures (PPEMs) ratings or non-compliance with GaPSC rules. If CAEP accreditation of the EPP is delayed, denied, or revoked, GaPSC will render an EPP approval decision. If the accreditation visit is conducted solely by CAEP, GaPSC approval of the EPP will be based upon the implementation of the state approval process and a final EPP approval decision will be rendered by the Commission. Program approval is contingent upon EPP approval.

4. LUAs, qualifying organizations (see paragraph (3) (a) 1), and IHEs seeking GaPSC approval as an EPP shall follow all applicable GaPSC policies and procedures, e.g., preconditions to determine eligibility for a review, approval review requirements, post review requirements, Commission decisions, public disclosure policy, and annual reporting procedures. In order to maintain approval status, all GaPSC-approved EPPs must maintain regional or GaPSC-accepted accreditation and must comply with all applicable GaPSC rules and policies including, but not limited to, those regarding Preparation Program Effectiveness Measures, annual reporting, and data submission requirements. Failure by an approved provider to fully comply with GaPSC Educator Preparation, Certification, and Ethics Rules, Commission approval decisions, or agency procedures and/or requirements may result in changes in approval status that could include revocation of approval. Failure to comply with federal reporting requirements may result in fines.

5. The EPP must have completed the GaPSC approval process and be approved by the GaPSC before candidates are enrolled in educator preparation programs and begin taking classes.

6. For EPPs offering initial preparation programs leading to a Teaching, Leadership, or Service certificate, GaPSC EPP approval cycles shall include Developmental Approval valid for three (3) years and Continuing Approval valid for seven (7) years. The Developmental Approval Review is used to determine if a new EPP has the capacity to meet state standards and it is followed, in three (3) to four (4) years, by a First Continuing Review to determine if the EPP has evidence of meeting state standards. Following the First Continuing Review, the GaPSC will conduct Continuing Reviews of the EPP and all preparation programs at seven (7) year intervals. For IHEs seeking to maintain CAEP accreditation, the state Continuing Review will be scheduled such that the state review will be completed and the resulting GaPSC approval decision will be rendered prior to the beginning of the CAEP site visit. GaPSC will require a Focused Approval Review or a Probationary Review of an approved or accredited EPP and/or its educator preparation programs in fewer than seven (7) years if annual performance data indicate standards are not being met, or if a previous approval review indicates pervasive problems exist that limit provider capacity to offer programs capable of meeting standards and requirements specified in GaPSC educator preparation and certification rules, or if GaPSC staff determine non-compliance with state rules.

7. For EPPs offering only endorsement programs, GaPSC EPP approval cycles shall include Developmental Approval valid for seven (7) years and Continuing Approval every seven (7) years thereafter.

8. GaPSC-approved EPPs shall comply with all GaPSC reporting requirements, to include the submission of data in all appropriate candidate-level, program-level, and EPP-level reporting systems (e.g., Traditional Program Management System [TPMS], Non-Traditional Reporting System [NTRS], Provider Reporting System [PRS], and federal annual reports on the performance of the EPP and all educator preparation programs). Out-of-state EPPs offering initial teacher preparation programs to Georgia residents and/or to residents of other states who fulfill field and clinical experiences in Georgia B/P-12 schools shall comply with all applicable GaPSC reporting requirements, to include the submission of data in TPMS and other systems that may become applicable. EPPs shall report according to the schedules and timelines published by GaPSC and shall accurately provide all data elements. Failure to report on time and accurately may negatively impact EPP approval status. See GaPSC Rule [505-3-.02](#), EDUCATOR PREPARATION PROVIDER ANNUAL REPORTING AND EVALUATION.

9. GaPSC-approved EPPs shall notify all enrolled candidates when EPP and/or program approval is revoked or when approval status is changed to Probation. Notification must be made within sixty (60) days after such a GaPSC decision is granted in written form via letter or e-mail, and a copy must be provided to GaPSC by the EPP head. This notification must clearly describe the impact of the approval status change on candidates and the options available to them. The EPP must maintain records of candidates' acknowledgement of receipt of the notification.

#### (d) GaPSC Approval of Educator Preparation Programs

1. Educator preparation programs leading to Georgia educator certification shall be offered only by GaPSC-approved EPPs (reference paragraph (3) (c) 3). All initial preparation programs and endorsement programs must be approved by the GaPSC.

2. GaPSC-approved EPPs seeking approval to add new initial preparation programs may submit the programs for GaPSC approval prior to receiving governing board approval, as long as governing board approval is granted forty-five (45) days prior to the approval review.

3. GaPSC-approved EPPs seeking approval for preparation programs leading to Georgia educator certification shall follow all applicable GaPSC program approval policies and procedures in effect at the time of the requested approval and shall comply with revised policies in accordance with timelines published by the GaPSC.

4. Initial educator preparation programs and endorsement programs shall be approved by the GaPSC before candidates are enrolled and begin program coursework.

5. GaPSC-approved EPPs, in conjunction with preparations for an EPP approval review, shall submit program reports conforming to GaPSC program standards and program review requirements for approval by GaPSC. Programs may also be submitted to GaPSC-accepted Specialized Professional Associations or program accrediting agencies for national recognition or accreditation. If the highest level of recognition or accreditation, in most cases National Recognition or Accreditation, is granted for a program, state approval procedures will be reduced to remove duplication and will include only those components necessary to ensure Georgia-specific standards and requirements are met. Programs submitted for national recognition or accreditation that are not granted National Recognition (e.g., granted Recognition with Conditions or any level of recognition lower than National Recognition) or Accreditation must comply with all applicable GaPSC program approval review requirements. See the guidance document accompanying this rule for the list of GaPSC-accepted SPAs and program accrediting agencies.

6. GaPSC approval of initial preparation programs in Teaching (T), Leadership (L), and Service (S) fields shall include a Developmental Approval Review to determine if the new educator preparation program has the capacity to meet state standards. Developmental Approval is valid for three (3) to four (4) years and is followed by a First Continuing Review to determine if the educator preparation program has evidence of meeting state standards. Following the First Continuing Review, the GaPSC will conduct Continuing Reviews of the educator preparation programs in conjunction with the EPP Continuing Review at seven (7) year intervals.

7. GaPSC approval of new endorsement programs shall include an Administrative Approval process to determine if the new program has the capacity to meet state standards followed by a Continuing Approval Review of the program in conjunction with the next scheduled EPP Continuing Review, and Continuing Reviews every seven (7) years thereafter.

8. The GaPSC will require a Focused Approval Review or a Probationary Review of an approved educator preparation program in fewer than seven (7) years if annual performance data indicate standards are not being met or if a previous approval review indicates pervasive problems exist limiting program capacity to meet standards and requirements specified in GaPSC educator preparation and certification rules.

9. GaPSC-approved EPPs shall submit program(s) for GaPSC approval corresponding to the appropriate level of preparation (initial or endorsement) and in a certification field authorized in GaPSC Certification Rules. Although advanced/degree-only preparation programs are neither reviewed nor approved by GaPSC, those accepted by GaPSC for the purposes of certificate level upgrades must be listed in the GaPSC Certificate Upgrade Advisor.

10. GaPSC-approved EPPs shall make program decisions based upon program purpose, institutional mission, supply and demand data, and B/P-12 partner needs, and shall attempt to include a variety of options for program completion (e.g., multiple delivery models, degree options, and individualized programs; additional examples are provided in the guidance document accompanying this rule).

11. Ongoing GaPSC approval of educator preparation programs is contingent upon EPP approval status and the performance of the EPP and its programs. As described in GaPSC Educator Preparation Rule [505-3-.02](#), EDUCATOR PREPARATION PROVIDER ANNUAL REPORTING AND EVALUATION, are used as part of the approval process to determine ongoing approval of EPPs and educator preparation programs.

12. Out-of-state institutions offering initial teacher preparation programs to Georgia residents and/or to residents of other states who fulfill field and clinical experiences in Georgia B/P-12 schools shall ensure their candidates hold the Georgia Pre-Service Certificate prior to beginning any field and clinical experiences in any Georgia B/P-12 school required during program enrollment. The requirements for this certificate are outlined in GaPSC Rule [505-2-.03](#), PRE-SERVICE TEACHING CERTIFICATE. Out-of-state institutions preparing candidates for Georgia certification must also ensure their candidates meet all program completion assessment requirements outlined in this rule in paragraphs (3) (e) (5) (i) and (ii); the requirements specified in GaPSC Certification Rule [505-2-.22](#), CERTIFICATION BY STATE-APPROVED PROGRAM, paragraph (2) (d) 2; and the requirements outlined in GaPSC Certification Rule [505-2-.04](#), INDUCTION CERTIFICATE, including the required amount of time spent in the culminating clinical experience (i.e., student teaching or internship occurring after, and not including, field experiences), and passing the ethics and content assessments.

13. Out-of-state institutions offering initial teacher preparation programs to Georgia residents and/or to residents of other states who fulfill field and clinical experiences in Georgia B/P-12 schools are subject to all applicable data collection requirements referenced in paragraph (3) (c) 8. and described in GaPSC Rule [505-3-.02](#), EDUCATOR PREPARATION PROVIDER ANNUAL REPORTING AND EVALUATION.

#### (e) Educator Preparation Program Requirements

##### 1. Admission Requirements

(i) GaPSC-approved EPPs shall ensure candidates enrolled in GaPSC-approved initial preparation programs at the baccalaureate level or higher have a minimum GPA of 2.5 on a 4.0 scale. This requirement applies to all initial preparation programs in Teaching (T), Leadership (L), and Service (S) fields, regardless of degree level, including non-degree, certification-only programs. EPPs shall monitor each cohort aggregate GPA for changes, document any point at which the cohort GPA is less than 3.0, disaggregate the data by race and ethnicity and any other mission-related categories, analyze the data to identify specific needs for candidate support, and develop and implement plans to provide the needed supports. The term, *enrolled cohort* refers to all candidates admitted to and enrolled in all initial preparation programs (across all T, L, and S fields as applicable) offered by the EPP in the GaPSC-defined reporting year (September 1 - August 31). EPPs may exempt individuals from the minimum GPA requirement under the following circumstances:

(I) If the prospective candidate's most recent undergraduate GPA was obtained ten (10) or more years prior to admission; or

(II) If the prospective candidate did not complete undergraduate coursework (applicable only to CTAE programs).

Exempted GPAs are not included in the calculation of the average for the cohort. EPPs may accept up to 10% of the admitted cohort with GPAs lower than 2.5. EPPs must monitor the progression of candidates admitted with a GPA lower than 2.5 and provide support in the areas of academic weakness.

(ii) **Program Admission Assessment.**

(I) GaPSC-approved EPPs shall ensure candidates admitted into initial preparation programs meet the GaPSC Program Admission Assessment (PAA) requirement. With the three exceptions described below, a passing score on the Program Admission Assessment or a qualifying exemption is required prior to enrollment in all initial preparation programs in Teaching (T), Leadership (L), and Service (S) fields.

I. Military retirees or spouses of active-duty military personnel who do not exempt the requirement must attempt the Program Admission Assessment within the first year of program enrollment and must pass the assessment within two (2) years of program admission or prior to program completion, whichever occurs first (see GaPSC Rule [505-2-.46 MILITARY SUPPORT CERTIFICATE](#));

II. Candidates seeking Career and Technical Specializations certification must either exempt the requirement or pass the Program Admission Assessment within three (3) years of program admission or prior to program completion, whichever occurs first; and

III. Professionally certified educators (valid or expired) who enroll in initial preparation programs for the purpose of adding a new field of certification are not required to meet the Program Admission Assessment requirement.

(II) PAA qualifying exemptions include minimum scores on the ACT, GRE, and SAT. Information on PAA qualifying exemptions is available at <http://www.gapsc.com/EducatorPreparation/Assessment/BasicSkillsInfo.aspx>. See GaPSC Rule [505-2-.26](#), CERTIFICATION AND LICENSURE ASSESSMENTS for additional information related to program admission testing requirements.

(III) For candidates not meeting qualifying exemption requirements, GaPSC-approved EPPs may accept either a PAA composite score of 750, or require a score of 250 on each of the three parts of the PAA (reading, writing, and mathematics).

(IV) GaPSC-approved EPPs may utilize the Limited Flexibility Exemption for prospective candidates who do not meet PAA qualifying exemption requirements and do not pass one of the three parts of the assessment. The Limited Flexibility Exemption allows EPPs to consider admitting candidates with a GPA of 2.5 or higher who, after two attempts, do not pass one of the three PAA tests. EPPs using the Limited Flexibility Exemption must provide support to candidates in the PAA test area not passed and monitor their progression through programs. Although candidate support options need not include additional coursework, they must address the individual needs of admitted candidates based on PAA scores and any gaps in prior academic preparation. The number of PAA Limited Flexibility Exemptions that may be granted per annual cohort is based upon EPP enrollment as follows:

I. EPPs admitting 60 or more candidates may exempt PAA for up to ten percent (10%) of the annual admitted cohort,

II. EPPs admitting 31 to 59 candidates may exempt PAA for up to five (5) candidates, and

III. EPPs admitting 30 or fewer candidates may exempt PAA for up to four (4) candidates.

(iii) The Georgia Educator Ethics Assessment must be passed prior to enrollment in a traditional or non-traditional initial educator preparation program and to qualify for the Pre-Service Teaching Certificate (see GaPSC Rule [505-2-.03](#), PRE-SERVICE TEACHING CERTIFICATE).

(iv) GaPSC-approved EPPs shall ensure candidates admitted to initial preparation programs at the post-baccalaureate level have attained appropriate depth and breadth in both general and content studies, with a minimum of a bachelor's degree from a GaPSC-accepted accredited institution. Candidates seeking certification in Career Technical and Agricultural Education (CTAE) fields must hold a high school diploma or GED, or an associate's degree or higher in the field of certification sought, as delineated in applicable GaPSC Certification Rules. CTAE candidates admitted with a high school diploma or GED must complete both the associate's degree and the initial teacher preparation program to earn a professional certificate. The preparation program must be completed within three years; an additional year is allowable if needed to complete the associate's degree.

## 2. Pre-service Certificate Request

(i) EPPs must request the Pre-Service Certificate for all candidates admitted to traditional initial teacher preparation programs at the baccalaureate level or higher, except for candidates who hold a valid professional Georgia teaching certificate and are currently employed in a Georgia school. Out-of-state EPPs must request the Pre-Service Certificate for candidates enrolled in initial teacher preparation programs and completing field and clinical experiences in Georgia B/P-12 schools; such candidates must be enrolled in programs leading to a certification field offered by the GaPSC. See GaPSC Rule [505-2-.03](#), PRE-SERVICE CERTIFICATE for Pre-Service certification requirements.

(ii) Successful completion of a criminal record check is required to earn the Pre-Service Certificate.

## 3. Program Content and Curriculum Requirements

(i) Preparation programs for educators prepared as teachers shall incorporate the latest version of the InTASC Model Core Teaching Standards developed by the Interstate Teacher Assessment and Support Consortium. Preparation programs for educators prepared as leaders shall incorporate these standards into those courses related to instructional leadership to assure leadership candidates understand the InTASC standards as they apply to the preparation and continued growth and development of teachers.

(ii) GaPSC-approved EPPs shall require a major or equivalent in all secondary and P-12 fields, where appropriate. The equivalent of a major is defined for middle grades (4-8) as a minimum of fifteen (15) semester hours of coursework in the content field and for secondary (6-12) as a minimum of twenty-one (21) semester hours of coursework in the content field. Content field coursework must meet expected levels of depth and breadth in the content area (i.e., courses above the General Education level) and shall address the program content standards required for the field as delineated in GaPSC Educator Preparation Rules [505-3-.19](#) through [505-3-.53](#).

(iii) GaPSC-approved EPPs shall ensure candidates in all initial preparation programs complete a sequence of courses and/or experiences in professional studies that includes knowledge about and application of professional ethics and behavior appropriate for school and community, ethical decision-making skills, and specific knowledge about the Georgia Code of Ethics for Educators. Candidates are expected to demonstrate knowledge and dispositions reflective of professional ethics and the standards and requirements delineated in the Georgia Code of Ethics for Educators. In addition to candidates meeting the state-approved ethics assessment requirement in 505-3-.01,(e) 1.

(iii) and (e) 5. (iii) (see GaPSC Rule [505-2-.26](#), CERTIFICATION AND LICENSURE ASSESSMENTS), GaPSC-approved EPPs shall assess candidates' knowledge of professional ethics and the Georgia Code of Ethics for Educators either separately or in conjunction with assessments of dispositions.

(iv) GaPSC-approved EPPs shall ensure candidates are prepared to implement Georgia state mandated standards (i.e., Georgia Performance Standards [GPS]; Georgia Performance Standards [CCGPS], Georgia Standards of Excellence, College and Career Ready Standards, and all other GaDOE-approved standards) in each relevant content area. Within the context of core knowledge instruction, providers shall ensure candidates are prepared to develop and deliver instructional plans that incorporate critical thinking, problem solving, communication skills, and opportunities for student collaboration. EPPs shall ensure candidates are also prepared to implement any Georgia

mandated educator evaluation system. EPPs shall ensure educational leadership candidates understand all state standards and have the knowledge and skills necessary to lead successful implementation of standards in schools.

(v) GaPSC-approved EPPs shall require candidates seeking teacher certification to demonstrate knowledge of the definitions and characteristics of dyslexia and other related disorders; competence in the use of evidence-based interventions, structured multisensory approaches to teaching language and reading skills, and accommodations for students displaying characteristics of dyslexia and/or other related disorders; and competence in the use of a response-to-intervention framework addressing reading, writing, mathematics, and behavior, including:

(I) Universal screening;

(II) Scientific, research-based interventions;

(III) Progress monitoring of the effectiveness of interventions on student performance;

(IV) Data-based decision making procedures related to determining intervention effectiveness on student performance and the need to continue, alter, or discontinue interventions or conduct further evaluation of student needs; and

(V) Application and implementation of response-to-intervention and dyslexia and other related disorders instructional practices in the classroom setting.

(vi) GaPSC-approved EPPs shall require candidates seeking certification to demonstrate satisfactory proficiency in computer and other technology applications and skills, and satisfactory proficiency in integrating Information, Media and Technology Literacy into curricula and instruction, including incorporating B/P-12 student use of technology, and to use technology effectively to collect, manage, and analyze data for the purpose of improving teaching and learning. This requirement may be met through content embedded in courses and experiences throughout the preparation program and through demonstration of knowledge and skills during field and clinical experiences. Candidates shall demonstrate the specialized knowledge and skills necessary for effective teaching in a distance learning environment.

(vii) GaPSC-approved EPPs shall require candidates seeking certification in a Teaching(T) field, the field of Educational Leadership (L), or the Service (S) fields of Media Specialist and School Counseling to complete either five (5) or more quarter hours or three (3) or more semester hours of coursework in the identification and education of children who have special educational needs or the equivalent through a Georgia-approved professional learning program. This requirement may be met in a separate course, or content may be embedded in courses and experiences throughout the preparation program (see Rule [505-2-.24](#), SPECIAL GEORGIA REQUIREMENTS). In addition, candidates in all fields must have a working knowledge of Georgia's framework for the identification of differentiated learning needs of students and how to implement multi-tiered structures of support addressing the range of learning needs.

(viii) GaPSC-approved EPPs shall ensure candidates being prepared to teach in the fields of Elementary Education, Middle Grades Education, and the special education fields of General Curriculum, Adapted Curriculum, and General Curriculum/Elementary Education (P-5) demonstrate competence in the knowledge of methods of teaching reading. Preparation to teach reading shall encompass the development of fundamental reading skills, including phonemic awareness, phonics, fluency, vocabulary, and reading comprehension.

(ix) GaPSC-approved EPPs offering endorsement programs shall ensure the programs are designed to result in candidates' expanded knowledge and skills in creating challenging learning experiences, supporting learner ownership and responsibility for learning, and in strengthening analysis and reflection on the impact of planning to reach rigorous curriculum goals as specified in GaPSC Rules [505-3-.82](#)-505-3-.115. Unless specified otherwise in GaPSC Rules [505-3-.82](#) through [505-3-.115](#), endorsement programs may be offered as stand-alone programs or embedded in initial preparation or degree-only programs. Embedded endorsement programs must include field experiences specifically for meeting endorsement standards and requirements, as well as any additional grade levels addressed by the endorsement. These field experiences must be in addition to those required for the initial preparation program. Although field experiences in specific grade bands are not required for endorsement programs,

candidates must have opportunities to demonstrate the knowledge and skills delineated in endorsement standards in as many settings as necessary to demonstrate competence with children at all developmental levels addressed by the endorsement. In addition to field experience requirements, the GaPSC Continuing approval process for embedded endorsement programs will require EPPs to provide evidence of meeting a minimum of one (1) of the following (2) options:

(I) Option 1: Additional Coursework. Endorsement programs are typically comprised of three (3) or four (4) courses (the equivalent of nine [9] or twelve [12] semester hours). Although some endorsement standards may be required in initial preparation programs (e.g., Reading Endorsement standards must be addressed in Elementary Education programs) and in such cases some overlap of coursework is expected, it may be necessary to add endorsement courses to a program of study to fully address the additional knowledge and skills delineated in endorsement standards.

(II) Option 2: Additional Assessments(s). Candidates' demonstration of endorsement program knowledge and skills must be assessed by either initial preparation program assessments or via additional assessment instruments specifically designed to address endorsement program content.

See the guidelines accompanying this rule for further clarification of expectations for endorsement programs.

(x) GaPSC-approved EPPs shall provide information to each candidate on Georgia's tiered certification structure, professional learning requirements, and employment options.

#### 4. Requirements for Partnerships, and Field Experiences and Clinical Practice

(i) Effective partnerships with B/P-12 schools and/or school districts are central to the preparation of educators. At a minimum, GaPSC-approved EPPs shall establish and maintain collaborative relationships with B/P-12 schools, which are formalized as partnerships and focused on continuous school improvement and student growth and learning through the preparation of candidates, support of induction phase educators, and professional development of B/P-20 educators. EPPs are encouraged to establish and sustain partnerships meeting higher levels of effectiveness, as described in the guidance document accompanying this rule.

(ii) GaPSC-approved EPPs shall require in all programs leading to initial certification in teaching, leadership, or service fields, and endorsement programs, field experiences that include organized and sequenced engagement of candidates in settings providing them with opportunities to observe, practice, and demonstrate the knowledge, skills, and dispositions delineated in all applicable institutional, state, and national standards. The experiences must be systematically designed and sequenced to increase the complexity and levels of engagement with which candidates apply, reflect upon, and expand their knowledge and skills. Since observation is a less rigorous method of learning, emphasis should be on field experience sequences requiring active professional practice or demonstration and including substantive work with B/P-12 students or B/P-12 personnel as appropriate depending upon the preparation program. Field experience placements and sequencing will vary depending upon the program. In non-traditional preparation programs, such as GaTAPP, field experiences occur outside candidates' classrooms with students with diverse learning needs and varied backgrounds in at least two settings during the clinical practice. Refer to the guidance document accompanying this rule for additional information related to field experiences and clinical practice.

(iii) GaPSC-approved EPPs shall ensure candidates complete supervised field experiences consistent with the grade levels of certification sought. For Birth Through Kindergarten programs, field experiences are required at three (3) age levels: ages 0 to 2, ages 3 to 4, and kindergarten. For Elementary Education programs (P-5), field experiences are required in three (3) grade levels: PK-K, 1-3, and 4-5. For middle grades education programs, field experiences are required in two (2) grade levels: 4-5 and 6-8. Programs leading to P-12 certification shall require field experiences in four (4) grade levels: PK-2, 3-5, 6-8, and 9-12; and secondary education programs (6-12) shall require field experiences in two (2) grade levels: 6-8 and 9-12.

(iv) GaPSC-approved EPPs shall ensure candidates complete supervised clinical practice (residency/internships) in the field of certification sought and only in fields for which the EPP has been approved by the GaPSC. Clinical practice for all fields must occur in regionally accredited schools, charter schools approved by the Georgia State

Charter School Commission, charter schools approved by the Georgia Department of Education, private schools accredited by a GaPSC-accepted accreditor, Department of Defense schools, or in international settings meeting accreditation criteria specified in GaPSC Rule [505-2-.31](#), GAPSC-ACCEPTED ACCREDITATION; VALIDATION OF NON-ACCREDITED DEGREES. Candidates in Birth Through Kindergarten programs may participate in residencies or internships in regionally accredited schools, in pre-schools or child care centers licensed by the Georgia Department of Early Care and Learning (DECAL, also known as Bright from the Start), or in pre-schools accredited by USDOE- or CHEA-accepted accrediting agencies. Candidates of GaPSC-approved EPPs must meet all applicable Pre-Service Certificate requirements, regardless of clinical practice placement location. Clinical practice must be designed and implemented cooperatively with B/P-12 partners and candidates' experiences must allow them to demonstrate their developing effectiveness and positive impact on all students' learning and development. Although year-long residencies/internships as defined herein (see paragraph (2) (ax)) are recognized as most effective, teacher candidates must spend a minimum of one (1) full semester or the equivalent in residencies or internships. GaPSC preparation program rules for service and leadership fields may require more than one (1) full semester of clinical practice; see GaPSC Rules [505-3-.63](#) through [505-3-.81](#).

(v) B/P-12 educators who supervise candidates (mentors, cooperating teachers, educational leadership coaches/mentors, Service (S) field supervisors) in residencies or internships at Georgia schools shall meet the following requirements:

(I) B/P-12 supervisors shall have a minimum of three (3) years of experience in a teaching, service, or leadership role; and

(II) If the residency or internship is completed at a Georgia school requiring GaPSC certification, the B/P-12 supervisor shall hold renewable Professional Level Certification in the content area of the certification sought by the candidate. In cases where a B/P-12 supervisor holding certification in the content area is not available, the candidate may be placed with a Professionally Certified educator in a related field of certification (related fields are defined in the guidance document accompanying this rule). For teaching field candidates who are employed as the full-time teacher of record while completing residency or internship in a school requiring GaPSC certification, the B/P-12 supervisor must hold Professional Certification.

(III) If the residency or internship is completed at a Georgia school that has the legal authority to waive certification, the B/P-12 supervisor must hold a Clearance Certificate.

(IV) The Partnership Agreement shall describe training, evaluation, and ongoing support for B/P-12 supervisors and shall clearly delineate qualifications and selection criteria mutually agreed upon by the EPP and B/P-12 partner. The Partnership Agreement shall also include a principal or employer attestation assuring educators selected for supervision of residencies/internships are the best qualified and have received an annual summative performance evaluation rating of proficient/satisfactory or higher for the most recent year of experience.

(V) Certificate IDs (to include Clearance Certificate IDs as applicable) of B/P-12 supervisors must be entered in TPMS or NTRS prior to the completion of the residency or internship.

It is the responsibility of GaPSC-approved EPPs and out-of-state EPPs who place candidates seeking Georgia certification in Georgia schools for field and clinical experiences to ensure these requirements are met.

## 5. Assessment Requirements

(i) State-approved Content Assessment.

(I) Eligibility: EPPs shall determine traditional program candidates' readiness for the state-approved content assessment and shall authorize candidates for testing only in their field(s) of initial preparation and only at the appropriate point in the preparation program.

(II) Attempts: GaPSC-approved EPPs shall require all enrolled candidates to attempt the state-approved content assessment (resulting in an official score on all parts of the assessment) within the content assessment window of time beginning on a date determined by the EPP after program admission and ending on August 31 in the year of

program completion, and at least once prior to program completion. Candidates enrolled in a traditional (IHE-based), initial preparation program leading to Middle Grades certification must attempt the state-approved content assessment in each of the two (2) areas of concentration, as required for program completion and receive an official score on each assessment prior to program completion. For more information on Middle Grades areas of concentration, see GaPSC Rule [505-3-19](#), MIDDLE GRADES EDUCATION PROGRAM.

(III) Passing Score: A passing score on all applicable state-approved content assessments is not required for program completion, except in the GaTAPP program, which is a non-traditional, certification-only program (See GaPSC Rule [505-3-05](#), GEORGIA TEACHER ACADEMY FOR PREPARATION AND PEDAGOGY (GaTAPP)); however, a passing score is required for state certification. See GaPSC Rule [505-2-26](#), CERTIFICATION AND LICENSURE ASSESSMENTS, and GaPSC Rule [505-2-08](#), PROVISIONAL CERTIFICATE.

(ii) State-approved Performance-based Assessments.

(I) Eligibility: EPPs shall determine initial preparation program candidates' readiness for the state-approved performance-based assessments in state-approved Teacher Leadership programs and Educational Leadership Tier II programs and shall authorize candidates for testing only in their field(s) of preparation and only at the appropriate point in the preparation program.

(II) Attempts: GaPSC-approved EPPs shall require candidates enrolled in state-approved Educational Leadership Tier II preparation programs to attempt the state-approved performance-based assessment (resulting in an official score on all tasks within the assessment) prior to program completion.

(III) Passing Score: A passing score on all applicable state-approved performance-based assessments is not required for program completion; however, a passing score is required for state certification. See GaPSC Rule [505-2-26](#), CERTIFICATION AND LICENSURE ASSESSMENTS, Rule [505-2-153](#), EDUCATIONAL LEADERSHIP, and [505-2-149](#), TEACHER LEADERSHIP.

(iii) State-approved Educator Ethics Assessment.

(I) Program Admission:

A. Candidates who enroll in initial teacher preparation programs must pass the Georgia Educator Ethics Assessment prior to beginning program coursework. Educators who hold a valid Induction, Professional, Lead Professional, or Advanced Professional Certificate are not required to pass the assessment if they enroll in an initial preparation program for the purpose of adding a new teaching field.

B. Candidates who enroll in any GaPSC-approved Educational Leadership program must pass the Georgia Ethics for Educational Leadership Assessment prior to beginning program coursework.

## 6. Program Completion Requirements

(i) GaPSC-approved EPPs shall require candidates completing initial preparation programs to have a 2.5 or higher overall GPA on a 4.0 scale. Non-traditional program providers do not issue grades and therefore are not subject to this requirement; however, non-traditional EPPs must verify all program requirements are met as specified in GaPSC Rule [505-3-05](#), GEORGIA TEACHER ACADEMY FOR PREPARATION AND PEDAGOGY.

(ii) GaPSC-approved EPPs may accept professional learning, prior coursework, or documented experience the EPP deems relevant to the program of study in lieu of requiring candidates to repeat the same or similar coursework for credit.

(iii) GaPSC-approved EPPs shall provide, at appropriate intervals, information to candidates about instructional policies and requirements needed for completing educator preparation programs, including all requirements necessary to meet each candidate's certification objective(s), the availability of EPP services such as tutoring services, social and psychological counseling, and job placement and market needs based on available supply and demand data.

(iv) GaPSC-approved EPPs shall provide performance data to candidates that they may use to inform their individual professional learning needs during induction.

(f) Verification of Program Completion and Reporting of Ethics Violations

1. GaPSC-approved EPPs shall designate an official who will provide evidence to the GaPSC that program completers have met the requirements of approved programs, including all applicable Special Georgia Requirements, and thereby qualify for state certification.

2. GaPSC-approved EPPs shall, through appropriate GaPSC reporting systems (i.e., Traditional Program Management System [TPMS] or the Non-Traditional Reporting System [NTRS]), notify the GaPSC of program completion or program withdrawal within sixty (60) days of the event. EPPs shall also submit, in a timely manner, any documentation required of them by the GaPSC Certification Division for program completers seeking GaPSC certification.

3. GaPSC-approved EPPs shall ensure program completers meet all requirements of the approved program in effect at the time the candidate was officially admitted to the program and any additional program requirements with effective dates after program admission, as described elsewhere in this rule.

4. Should program completers return to their GaPSC-approved EPP more than five (5) years after completion to request verification of program completion, providers shall require those individuals to meet current preparation requirements to assure up-to-date knowledge in the field of certification sought.

5. GaPSC-approved EPPs shall immediately report to GaPSC any violations of the Georgia Code of Ethics for Educators by enrolled candidates. Failure to report ethical violations may result in changes in approval status that could include revocation of approval. Out-of-state EPPs placing candidates in Georgia schools for field and clinical experiences are expected to collaborate with Georgia B/P-12 partners to immediately report ethics violations. Procedures for reporting ethical violations are addressed in the guidance document accompanying this rule.

**Cite as** Ga. Comp. R. & Regs. R. 505-3-.01

**AUTHORITY:** O.C.G.A. § [20-2-200](#).

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**Repealed:** New Rule of same title adopted. F. June 7, 2010; eff. July 15, 2010, as specified by the Agency.

**Repealed:** New Rule of same title adopted. F. Dec. 26, 2012; eff. Jan. 15, 2013.

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**Note:** Correction of non-substantive typographical error in subparagraph (3)(e)4.(iv), "... see GaPSC Rules 505-3-.63 through 505-3-.8." corrected to "... see GaPSC Rules 505-3-.63 through 505-3-.81.", as requested by the Agency. Effective April 15, 2020. .", as requested by the Agency. Effective April 15, 2020.

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# Department 505. PROFESSIONAL STANDARDS COMMISSION

## Chapter 505-6. PROFESSIONAL PRACTICES

### 505-6-.01 The Code of Ethics for Educators

(1) **Introduction.** The Code of Ethics for Educators defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct. The Georgia Professional Standards Commission has adopted standards that represent the conduct generally accepted by the education profession. The code defines unethical conduct justifying disciplinary sanction and provides guidance for protecting the health, safety and general welfare of students and educators, and assuring the citizens of Georgia a degree of accountability within the education profession.

#### (2) **Definitions.**

(a) "Breach of contract" occurs when an educator fails to honor a signed contract for employment with a school/school system by resigning in a manner that does not meet the guidelines established by the Georgia Professional Standards Commission.

(b) "Certificate" refers to any teaching, service, or leadership certificate, license, or permit issued by authority of the Georgia Professional Standards Commission.

(c) "Child endangerment" occurs when an educator disregards a substantial and/or unjustifiable risk of bodily harm to the student.

(d) "Educator" is a teacher, school or school system administrator, or other education personnel who holds a certificate issued by the Georgia Professional Standards Commission and persons who have applied for but have not yet received a certificate. For the purposes of the Code of Ethics for Educators, "educator" also refers to paraprofessionals, aides, and substitute teachers.

(e) "Student" is any individual enrolled in the state's public or private schools from preschool through grade 12 or any individual under the age of 18. For the purposes of the Code of Ethics for Educators, the enrollment period for a graduating student ends on August 31 of the school year of graduation.

(f) "Complaint" is any written and signed statement from a local board, the state board, or one or more individual residents of this state filed with the Georgia Professional Standards Commission alleging that an educator has breached one or more of the standards in the Code of Ethics for Educators. A "complaint" will be deemed a request to investigate.

(g) "Revocation" is the permanent invalidation of any certificate held by the educator. A Voluntary Surrender is equivalent to and has the same effect as a revocation. A Voluntary Surrender shall become effective upon receipt by the Georgia Professional Standards Commission.

(h) "Denial" is the refusal to grant initial certification to an applicant for a certificate.

(i) "Suspension" is the temporary invalidation of any certificate for a period of time specified by the Georgia Professional Standards Commission.

(j) "Reprimand" admonishes the certificate holder for his or her conduct. The reprimand cautions that further unethical conduct will lead to a more severe action.

(k) "Warning" warns the certificate holder that his or her conduct is unethical. The warning cautions that further unethical conduct will lead to a more severe action.

(l) "Monitoring" is the quarterly appraisal of the educator's conduct by the Georgia Professional Standards Commission through contact with the educator and his or her employer. As a condition of monitoring, an educator may be required to submit a criminal background check (GCIC). The Commission specifies the length of the monitoring period.

(m) "No Probable Cause" is a determination by the Georgia Professional Standards Commission that, after a preliminary investigation, either no further action need be taken or no cause exists to recommend disciplinary action.

(n) "Inappropriate" is conduct or communication not suitable for an educator to have with a student. It goes beyond the bounds of an educator-student relationship.

(o) "Physical abuse" is physical interaction resulting in a reported or visible bruise or injury to the student.

### (3) Standards.

(a) Standard 1: **Legal Compliance** - An educator shall abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude; of any other criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana as provided for in Chapter 13 of Title 16; or of any other sexual offense as provided for in Code Section [16-6-1](#) through [16-6-17](#), [16-6-20](#), [16-6-22.2](#), or [16-12-100](#); or any other laws applicable to the profession. As used herein, conviction includes a finding or verdict of guilty, or a plea of nolo contendere, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

(b) Standard 2: **Conduct with Students** - An educator shall always maintain a professional relationship with all students, both in and outside the classroom. Unethical conduct includes but is not limited to:

1. Committing any act of child abuse, including physical and verbal abuse;
2. Committing any act of cruelty to children or any act of child endangerment;
3. Committing any sexual act with a student or soliciting such from a student;
4. Engaging in or permitting harassment of or misconduct toward a student;
5. Soliciting, encouraging, or consummating an inappropriate written, verbal, electronic, or physical relationship with a student;
6. Furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student; or
7. Failing to prevent the use of alcohol or illegal or unauthorized drugs by students under the educator's supervision (including but not limited to at the educator's residence or any other private setting).

(c) Standard 3: **Alcohol or Drugs** - An educator shall refrain from the use of alcohol or illegal or unauthorized drugs during the course of professional practice. Unethical conduct includes but is not limited to:

1. Being on school or Local Unit of Administration (LUA)/school district premises or at a school or a LUA/school district-related activity while under the influence of, possessing, using, or consuming illegal or unauthorized drugs; and
2. Being on school or LUA/school district premises or at a school-related activity involving students while under the influence of, possessing, or consuming alcohol. A school-related activity includes, but is not limited to, any activity sponsored by the school or school system (booster clubs, parent-teacher organizations, or any activity designed to enhance the school curriculum i.e. Foreign Language trips, etc).

(i) For the purposes of this standard, an educator shall be considered "under the influence" if the educator exhibits one or more of the following indicators, including but not limited to: slurred speech, enlarged pupils, bloodshot eyes, general personality changes, lack of physical coordination, poor motor skills, memory problems, concentration problems, etc.

(d) Standard 4: **Honesty** - An educator shall exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to, falsifying, misrepresenting, or omitting:

1. Professional qualifications, criminal history, college or staff development credit and/or degrees, academic award, and employment history;
2. Information submitted to federal, state, local school districts and other governmental agencies;
3. Information regarding the evaluation of students and/or personnel;
4. Reasons for absences or leaves;
5. Information submitted in the course of an official inquiry/investigation; and
6. Information submitted in the course of professional practice.

(e) Standard 5: **Public Funds and Property** - An educator entrusted with public funds and property shall honor that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes but is not limited to:

1. Misusing public or school-related funds;
2. Failing to account for funds collected from students or parents;
3. Submitting fraudulent requests or documentation for reimbursement of expenses or for pay (including fraudulent or purchased degrees, documents, or coursework);
4. Co-mingling public or school-related funds with personal funds or checking accounts; and
5. Using school or school district property without the approval of the local board of education/governing board or authorized designee.

(f) Standard 6: **Remunerative Conduct** - An educator shall maintain integrity with students, colleagues, parents, patrons, or businesses when accepting gifts, gratuities, favors, and additional compensation. Unethical conduct includes but is not limited to:

1. Soliciting students or parents of students, or school or LUA/school district personnel, to purchase equipment, supplies, or services from the educator or to participate in activities that financially benefit the educator unless approved by the local board of education/governing board or authorized designee;
2. Accepting gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest;
3. Tutoring students assigned to the educator for remuneration unless approved by the local board of education/governing board or authorized designee; and
4. Coaching, instructing, promoting athletic camps, summer leagues, etc. that involves students in an educator's school system and from whom the educator receives remuneration unless approved by the local board of education/governing board or authorized designee. These types of activities must be in compliance with all rules and regulations of the Georgia High School Association.

(g) **Standard 7: Confidential Information** - An educator shall comply with state and federal laws and state school board policies relating to the confidentiality of student and personnel records, standardized test material and other information. Unethical conduct includes but is not limited to:

1. Sharing of confidential information concerning student academic and disciplinary records, health and medical information, family status and/or income, and assessment/testing results unless disclosure is required or permitted by law;
2. Sharing of confidential information restricted by state or federal law;
3. Violation of confidentiality agreements related to standardized testing including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, violating local school system or state directions for the use of tests or test items, etc.; and
4. Violation of other confidentiality agreements required by state or local policy.

(h) **Standard 8: Required Reports** - An educator shall file with the Georgia Professional Standards Commission reports of a breach of one or more of the standards in the Code of Ethics for Educators, child abuse (O.C.G.A. § [19-7-5](#)), or any other required report. Unethical conduct includes but is not limited to:

1. Failure to report to the Georgia Professional Standards Commission all requested information on documents required by the Commission when applying for or renewing any certificate with the Commission;
2. Failure to make a required report of an alleged or proven violation of one or more standards of the Code of Ethics for educators of which they have personal knowledge as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner; and
3. Failure to make a required report of any alleged or proven violation of state or federal law as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. These reports include but are not limited to: murder, voluntary manslaughter, aggravated assault, aggravated battery, kidnapping, any sexual offense, any sexual exploitation of a minor, any offense involving a controlled substance and any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

(i) **Standard 9: Professional Conduct** - An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the education profession. Unethical conduct includes but is not limited to a resignation that would equate to a breach of contract; any conduct that impairs and/or diminishes the certificate holder's ability to function professionally in his or her employment position; or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students; or failure to supervise a student(s).

(j) **Standard 10: Testing** - An educator shall administer state-mandated assessments fairly and ethically. Unethical conduct includes but is not limited to:

1. Committing any act that breaches Test Security; and
2. Compromising the integrity of the assessment.

#### (4) **Reporting.**

(a) Educators are required to report a breach of one or more of the Standards in the Code of Ethics for Educators as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. Educators should be aware of legal requirements and local policies and procedures for reporting unethical conduct. Complaints filed with the Georgia Professional

Standards Commission must be in writing and must be signed by the complainant (parent, educator, or other LUA/school district employee, etc.).

(b) The Commission notifies local and state officials of all disciplinary actions. In addition, suspensions and revocations are reported to national officials, including the NASDTEC Clearinghouse.

**(5) Disciplinary Action.**

(a) The Georgia Professional Standards Commission is authorized to suspend, revoke, or deny certificates, to issue a reprimand or warning, or to monitor the educator's conduct and performance after an investigation is held and notice and opportunity for a hearing are provided to the certificate holder. Any of the following grounds shall be considered cause for disciplinary action against the educator:

1. Unethical conduct as outlined in The Code of Ethics for Educators, Standards 1-10 (GaPSC Rule 505-6-.01);
2. Disciplinary action against a certificate on grounds consistent with those specified in the Code of Ethics for Educators, Standards 1-10 (GaPSC Rule 505-6-.01);
3. Order from a court of competent jurisdiction or a request from the Department of Human Resources that the certificate should be suspended or the application for certification should be denied for non-payment of child support (O.C.G.A. § [19-6-28.1](#) and § [19-11-9.3](#));
4. Notification from the Georgia Higher Education Assistance Corporation that the educator is in default and not in satisfactory repayment status on a student loan guaranteed by the Georgia Higher Education Assistance Corporation (O.C.G.A. § [20-3-295](#));
5. Suspension or revocation of any professional license or certificate;
6. Violation of any other laws and rules applicable to the profession (O.C.G.A. § [16-13-111](#)); and
7. Any other good and sufficient cause that renders an educator unfit for employment as an educator.

(b) An individual whose certificate has been revoked, denied, or suspended may not serve as a volunteer or be employed as an educator, paraprofessional, aide, substitute teacher or, in any other position during the period of his or her revocation, suspension or denial for a violation of The Code of Ethics. The superintendent and the educator designated by the superintendent/Local Board of Education shall be responsible for assuring that an individual whose certificate has been revoked, denied, or suspended is not employed or serving in any capacity in their district. Both the superintendent and the superintendent's designee must hold GaPSC certification. Should the superintendent's certificate be revoked, suspended, or denied, the Board of Education shall be responsible for assuring that the superintendent whose certificate has been revoked, suspended, or denied is not employed or serving in any capacity in their district.

**Cite as** Ga. Comp. R. & Regs. R. 505-6-.01

**AUTHORITY:** O.C.G.A. § [20-2-200](#).

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# Department 560. RULES OF DEPARTMENT OF REVENUE

## Chapter 560-7. INCOME TAX DIVISION

### Subject 560-7-3. SUBSTANTIVE REGULATIONS

#### 560-7-3-.03 Election to Pay Tax at the Pass-Through Entity Level

(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the irrevocable election to pay tax at the Subchapter "S" corporation level and partnership level as provided by O.C.G.A. § [48-7-21](#) and O.C.G.A. § [48-7-23](#), respectively.

#### (2) Definitions.

(a) "Credit" means those credits provided by Article 2 of Chapter 7 of Title 48 of the O.G.G.A and Chapter 7A of Title 48 of the O.G.G.A.

(b) "Electing pass-through entity" means a pass-through entity which is qualified to make and has made the election to pay the tax levied by Chapter 7 of Title 48 at the entity level as provided by O.C.G.A. § [48-7-21](#) or O.C.G.A. § [48-7-23](#).

(c) "Internal Revenue Code of 1986" means the same as defined in O.C.G.A. § [48-1-2](#).

(d) "Owners" means the direct shareholders or partners of a pass-through entity that is eligible to make the election.

(e) "Pass-through entity" means a partnership or Subchapter "S" corporation.

#### (3) Which entities are eligible to make the election.

(a) The election may only be made by a pass-through entity that is 100 percent directly owned and controlled by persons eligible to be shareholders of an "S" corporation under § 1361 of the Internal Revenue Code of 1986, as amended.

(b) A disregarded single member limited liability company, qualified Subchapter "S" subsidiary, and any other disregarded entity cannot by itself make the election; provided, however, a regarded owner of such entities may make the election, provided the owner is eligible to make such election. In such event, the election would be for itself and all of its disregarded entities; provided, however, if the election is made, credits are still earned by the disregarded entity as provided by Georgia law and regulation.

(c) If a pass-through entity is owned by another pass-through entity, such owner may make the election for itself if it is qualified to do so.

(d) A limited liability company that is treated as a partnership for Georgia income tax purposes shall be treated as a partnership for purposes of this regulation.

#### (4) Making the election.

(a) An electing pass-through entity makes the election by checking the box and filling out the applicable schedule(s) on Form 600S if the entity is a Subchapter "S" corporation or on Form 700 if the entity is a partnership.

(b) The election is an irrevocable election for that year which must be made by the due date of the return including any extensions, if applicable.

(c) Each electing pass-through entity decides how to obtain consent from its owners; provided, however, the election is binding on all the owners once the election is made.

(d) The election is an annual election which must be made each year. If in a later year the pass-through entity decides to not make the election, no notice is required to be filed with the Department.

**(5) Estimated payments.**

(a) An electing pass-through entity is required to make estimated payments in the same manner as a C-Corporation and using the same form.

(b) The estimated tax form is required to be filed on the same due dates as is required for a C-Corporation.

(c) An electing pass-through entity is subject to the C-Corporation failure to pay estimated income tax penalties.

(d) Estimated payments made by owners are not eligible to be transferred to the pass-through entity. However, if the owners have made estimated payments or otherwise have credits or other attributes that would reduce their liability, the entity may check the "UET Annualization Exception Attached" box on the Form 600S or Form 700 and compute the penalty on Form 600 UET as if the entity had made such payments or applied such credits or attributes.

(e) For purposes of the 100% of the immediately preceding year's tax exception, the entity may check the "UET Annualization Exception Attached" box on the Form 600S or Form 700 and compute the penalty on Form 600 UET assuming the tax for the prior year was equal to 5.75% of the prior's year's income computed pursuant to paragraph (6).

(f) Owners who make estimated payments for the income attributable to an electing pass-through entity, may not transfer the estimated payments to the electing pass-through entity but must instead claim a refund of the overpayment, for the year the estimates were made for, by filing the income tax form the owner would normally file.

(g) A pass-through entity that makes estimated payments but then does not make the election to pay tax at the pass-through entity level, may not transfer the payments to its owners but must instead claim a refund of the overpayment for the year the estimates were made for. The entity may contact the Department and direct that the payments be transferred to its composite estimated tax account or its nonresident withholding tax account.

**(6) Computation of Income and the Tax.**

(a) If an electing pass-through entity that is a Subchapter "S" corporation makes the election, the Subchapter "S" corporation's federal taxable income for purposes of O.C.G.A. § [48-7-21](#) shall be the federal taxable income of the Subchapter "S" corporation as computed pursuant to the Internal Revenue Code of 1986 including the separately stated items of income or loss (such as charitable contributions, the Section 179 deduction, etc.); provided, however, charitable contributions, the Section 179 deduction, and any other deduction which is subject to an Internal Revenue Code of 1986 limitation, shall be limited to what is allowed pursuant to the Internal Revenue Code of 1986 for a C-Corporation. Once the federal taxable income is determined, the Subchapter "S" corporation shall then make the adjustments required by O.C.G.A. § [48-7-21](#) to arrive at Georgia taxable income before apportionment and allocation; provided, however, in computing the net income that is subject to taxation, the electing Subchapter "S" corporation shall not be allowed any deduction for taxes that are based on or measured by gross or net income or any other variant thereof. The Georgia taxable income before apportionment and allocation shall then be apportioned and allocated pursuant to O.C.G.A. § [48-7-31](#) to arrive at the income that is taxed at the entity level.

(b) If an electing pass-through entity that is a partnership makes the election, the partnership's federal taxable income for purposes of O.C.G.A. §§ [48-7-23](#) shall be the federal taxable income of the partnership as computed pursuant to the Internal Revenue Code of 1986 including the separately stated items of income or loss (such as charitable contributions, the Section 179 deduction, etc.); provided, however, charitable contributions, the Section 179 deduction, and any other deduction which is subject to an Internal Revenue Code of 1986 limitation, shall be limited to what is allowed pursuant to the Internal Revenue Code of 1986 for a C-Corporation. The electing pass-through entity shall not be allowed the deduction provided by Internal Revenue Code Section 743(b); provided,

however, such adjustment is still eligible to be made at the owner level. The electing pass-through entity shall not be allowed deductions based on self-employment, self-employed health insurance, Keogh or SEP or other deductions normally allowed in computing Adjusted Gross Income. Once the federal taxable income is determined, the partnership shall then make the adjustments required by O.C.G.A. § [48-7-27](#) to arrive at Georgia taxable income before apportionment and allocation. The electing pass-through entity shall not be allowed the exemptions provided by O.C.G.A. § [48-7-26](#), the standard deductions provided by O.C.G.A. § [48-7-27](#), any deduction for taxes that are based on or measured by gross or net income or any other variant thereof, and any other deduction provided in O.C.G.A. § [48-7-27](#) which is allowed based on the person being a natural person such as the retirement exclusion, etc. The Georgia taxable income before apportionment and allocation shall then be apportioned and allocated pursuant to O.C.G.A. § [48-7-31](#) to arrive at the income that is taxed at the entity level.

(c) The electing pass-through entity shall multiply its income that is taxed at the entity level by 5.75 percent or, if subsequently changed, the applicable statutory income tax rate to arrive at the tax levied by Chapter 7 of Title 48. Except as provided in this regulation, such tax shall be assessed and collected in the same manner and be subject to the same penalties and interest as the other income taxes imposed by Chapter 7 of Title 48.

(d) The electing pass-through entity may file amended returns subject to the applicable statute of limitations.

(e) The consolidated provisions of Regulation [560-7-3-.13](#) shall not apply to electing pass-through entities.

#### **(7) Tax Attributes.**

(a) Tax attributes, including, but not limited to credits and net operating losses, for an electing pass-through entity shall be generated, claimed, and utilized in the same manner as a C-Corporation.

(b) Tax attributes, including but not limited to credits and net operating losses, from tax years when an election was not made remain with the owners and shall not be eligible to be transferred to the electing pass-through entity. Except as provided in this paragraph, any tax attributes, including but not limited to credits and net operating losses, do not pass through to the owners and remain with the electing pass-through entity if the entity does not make the election in a later year. Net operating losses shall be treated in the same manner as is allowed for C-Corporations as provided in Regulation [560-7-3-.06](#). The electing pass-through entity shall file Form IT-552 to carryback net operating losses if eligible.

1. Except with respect to the credits allowed by O.C.G.A. §§ [48-7-29.16](#), [48-7-29.20](#), and [48-7-29.21](#), an electing pass-through entity may make an irrevocable election to pass through all or part of any credit, that is generated within the applicable statute of limitation period for the entity, to its owners for the taxable year the credit is generated. Such election is made by completing the "credit allocation to owners" schedule on an original or amended Form 600S or Form 700 for the taxable year the credit is generated. Such election must be made within the owner's applicable statute of limitation claiming period. If such election is made, the electing pass-through entity shall be required to pass-through the credits using the method provided in the applicable credit statute or regulation.

(i) For example, Regulation [560-7-8-.36](#) provides that the job tax credit is passed through "to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation". As such any job tax credit that is elected to be passed through must be passed through in this manner.

2. With respect to the credits allowed by O.C.G.A. §§ [48-7-29.16](#), [48-7-29.20](#), and [48-7-29.21](#), any credit earned by an electing pass-through entity shall not pass through to its owners; provided, however, the owner may separately earn the credits allowed by O.C.G.A. §§ [48-7-29.16](#), [48-7-29.20](#), and [48-7-29.21](#) with respect to any income that passes through to the owner and which was not taxed at the pass-through entity level in Georgia. As such, in determining the Georgia income on which such tax was actually paid by the owner, the owner must exclude any income that was subtracted on their Georgia return because the entity paid tax at the pass-through entity level in Georgia. Also, if a pass-through entity is preapproved to make and makes a contribution with respect to the credits allowed by O.C.G.A. §§ [48-7-29.16](#), [48-7-29.20](#), and [48-7-29.21](#) because the entity intends to make but then does not make the election to pay tax at the pass-through entity level for the taxable year of the preapproval and contribution, the pass-through entity shall be allowed to pass through such credits to its owners based on the year ending profit/loss percentage; provided however, the amount that is generated and passed through by the pass-

through entity is computed and generated in the same manner as if the pass-through entity had made such election and the amount that is passed through shall reduce the amount the owner is allowed to generate as provided in each respective statute for contributions related to pass through entities; any amounts that exceed such generation limits shall be disallowed entirely.

(i) For example. An electing pass-through entity apportions, pursuant to O.C.G.A. § [48-7-31](#), 30% of its income to Georgia and pays tax at the entity level on such income. If such entity earns the credit allowed by O.C.G.A. §§ [48-7-29.16](#), [48-7-29.20](#), or [48-7-29.21](#), the credit that is allowed will be limited to 75% of its income tax liability and no part of such credit may be passed through to its owners. The other 70% of the income passes through to such entity's owners. The owner may separately earn the credit, but in determining the credit that is allowed to an owner of a pass-through entity, the owner may only include the 70% of the income that passes through to such owner.

(c) No electing pass-through entity nor any of its owners shall be entitled to any credit under O.C.G.A. § [48-7-28](#) with respect to the electing pass-through entity tax paid to Georgia; provided, however, with respect to the income not taxed at the entity level by Georgia, a resident owner would be eligible for the credit under O.C.G.A. § [48-7-28](#) provided the requirements of that code section are met.

1. For example. A Subchapter "S" corporation makes the election to pay tax at the pass-through entity level in Georgia. Such electing pass-through entity apportions, pursuant to O.C.G.A. § [48-7-31](#), 30% of its income to Georgia and pays tax at the entity level on such income. The entity also apportions 70% of its income to another state. The resident owner files an income tax return in another state, that levies a tax upon net income, and the owner pays tax on such 70% of the income in that other state. The resident owner would be eligible for a credit under O.C.G.A. § [48-7-28](#) for such taxes.

(d) No electing pass-through entity nor any of its owners shall be entitled to any adjustment under subsection (d) of O.C.G.A. § [48-7-27](#) for the income taxed at the entity level by Georgia; provided, however, with respect to the income not taxed at the entity level by Georgia, a resident owner would be eligible for the adjustment under subsection (d) of O.C.G.A. § [48-7-27](#) provided the requirements of subsection (d) of O.C.G.A. § [48-7-27](#) are met. As such a resident owner would be eligible for the adjustment under subsection (d) of O.C.G.A. § [48-7-27](#) if the electing pass-through entity makes a similar election in another state provided the requirements of subsection (d) of O.C.G.A. § [48-7-27](#) are met.

1. For example. A partnership makes the election to pay tax at the pass-through entity level in Georgia. Such electing pass-through entity apportions, pursuant to O.C.G.A. § [48-7-31](#), 30% of its income to Georgia and pays tax at the entity level on such income. The entity also apportions 70% of its income to another state that allows a similar election to pay a tax on or measured by income at the pass-through entity level. The entity files a return in such state for the other 70% of the entity's income and the entity pays tax on such income. A resident owner would be eligible for the adjustment under subsection (d) of O.C.G.A. § [48-7-27](#) for such income.

**(8) Electing Pass-Through Entity with Certain Pension Plans.** If an electing pass-through entity has a pension plan where certain qualified retirement income is paid to retired owners (normally as a guaranteed payment) and such income can only, based on Federal law, be taxed by a retiree's state of residence in the year of payment, such electing pass-through entity shall subtract such guaranteed payment from its Georgia's income before allocating and apportioning such income pursuant to O.C.G.A. § [48-7-31](#). The amount subtracted shall then be taxed by the retiree's state of residence and such retiree shall not be eligible for the subtraction or addition to income for such respective share of the portion of income provided by paragraph (9).

#### **(9) Owner Subtraction.**

(a) Owners of an electing pass-through entity shall not recognize their respective share of the portion of income or loss that was apportioned and allocated to Georgia pursuant to this regulation. Such owner shall start with Federal Adjusted Gross income and then subtract on their Georgia income tax return their respective share of the income that was apportioned and allocated to Georgia at the entity level. In the event the electing pass-through entity has a loss at the entity level, the owner shall start with Federal Adjusted Gross income and add on their Georgia income tax return their respective share of the apportioned and allocated loss at the entity level. Any Georgia adjustments attributable to the owner's distributive share of such income or loss shall be adjusted proportionally.

(b) The subtraction or addition shall be made by the owners even when the electing pass-through entity uses credits to offset the tax that is due or uses net operating losses to offset the income.

(c) The remaining income of the owner is taxed using the rates provided in O.C.G.A. § [48-7-20](#) or the applicable rate provided in Chapter 7 of Title 48 for an owner not subject to O.C.G.A. § [48-7-20](#).

(d) If a nonresident owner's only source of Georgia income is the income that was taxed at the pass-through entity level, no return is required to be filed by such owner.

(e) In the event the electing pass-through entity has a different year end than the owners, the income shall be subtracted or added in the year in which the income was included in federal taxable income by the owners.

**(10) Audits.**

(a) A partnership that is audited by the Internal Revenue Service shall be required to report and pay the tax attributable to the audit at the entity level for a reviewed year where the election was made. The adjusted income that is taxed at the entity level shall be computed as provided in this regulation. In such case the provisions of Regulation [560-7-3-.11](#) shall not apply, instead the partnership shall file an amended return and report such adjustments and pay any tax required or claim any refund that is allowed based on the rules that normally apply to C-Corporations.

(b) An electing pass-through entity that is audited by the Department of Revenue shall be required to report and pay the tax attributable to the audit at the entity level for a reviewed year where the election was made. The adjusted income that is taxed at the entity level shall be computed as provided in this regulation. In such case the provisions of Regulation [560-7-3-.11](#) shall not apply, instead the pass-through entity shall be subject to the rules that normally apply to C-Corporations.

**(11) Investment Pass-Through Entities and Exempt Owners.** A pass-through entity that has owners that are exempt pursuant to O.C.G.A. § [48-7-24\(c\)](#) or that are otherwise exempt pursuant to O.C.G.A. § [48-7-25](#), shall be eligible to make the election and shall exclude the income that is exempt in arriving at the Georgia taxable income before apportionment and allocation; provided, however, any owners for which their respective share of the portion of income was excluded shall not be eligible for the subtraction or addition to income for such respective share of the portion of income provided by paragraph (9).

**(12) Withholding Under O.C.G.A. §§ [48-7-129](#) and [48-7-128](#).**

(a) An electing pass-through entity shall not be required to withhold tax as provided by O.C.G.A. § [48-7-129](#).

(b) An electing pass-through entity that sells property shall certify to the buyer on Form IT-AFF3 that the seller qualifies for and has made or will make the election to be taxed at the entity level pursuant to O.C.G.A. § [48-7-21](#) and O.C.G.A. § [48-7-23](#) and as such the seller is exempt from the withholding required by O.C.G.A. § [48-7-128](#).

**(13) Subchapter "S" Corporation Specific Issues.**

(a) A Subchapter "S" corporation with nonresident owners, which has pursuant to Regulation [560-7-3-.06](#) been filing as a C-Corporation and that makes the election to pay tax at the pass-through entity level, shall carryover any tax attributes, including but not limited to credits and net operating losses, from tax years when the entity was filing as a C-Corporation.

(b) A Subchapter "S" corporation is not required to file Form 600S-CA "Consent Agreement of Nonresident Shareholders of S Corporations" for any year where the election is made. A Subchapter "S" corporation with nonresident owners which has filed the required Form 600S-CA "Consent Agreement of Nonresident Shareholders of S Corporations" which is effective for the year before the year it elects to pay tax at the entity level, shall not be required to obtain and file such consents again if it does not make the election in a later year.

(14) **Effective Date.** The principles set forth in this regulation will apply to taxable years beginning on or after January 1, 2022.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-3-.03

**AUTHORITY:** O.C.G.A. §§ [48-2-12](#), [48-7-21](#), [48-7-23](#), [48-7-24](#), [48-7-27](#), [48-7-51](#), [48-7-53](#), [48-7-100](#), [48-7-117](#), [48-7-119](#), [48-7-120](#), [48-7-121](#), [48-7-129](#).

**HISTORY:** Original Rule entitled "Department of Revenue; State Revenue Commissioner; Deputy State Revenue Commissioner" adopted. F. and eff. June 30, 1965.

**Repealed:** F. Dec. 6, 2010; eff. Dec. 26, 2010.

**Adopted:** New Rule entitled "Election to Pay Tax at the Pass-Through Entity Level." F. Dec. 7, 2021; eff. Dec. 27, 2021.

### **560-7-3-.06 Taxation of Corporations**

(1) **Taxable Income.** Georgia taxable income of a corporation before apportionment and allocation shall be computed pursuant to O.C.G.A. § [48-7-21](#).

(2) **Affiliated Corporation.** For purposes of the affiliated corporations dividend deduction provided in O.C.G.A. § [48-7-21](#), the term "affiliated corporation" means a corporation that is a member of the taxpayer's "affiliated group" within the meaning of § 1504 of the Internal Revenue Code. This shall apply whether or not the affiliated group files a federal consolidated return.

(3) **Separate Return.** In the event a taxpayer files a separate return with Georgia but is included in a consolidated federal return, the taxpayer shall start with its separate company federal taxable income or loss. The separate company federal taxable income or loss shall be the taxable income or loss of the corporation included in the consolidated federal return but without the modifications listed in Internal Revenue Service Regulation § 1.1502-12.

(4) **Consolidated Return.** See Regulation [560-7-3-.13](#).

(5) **Net Operating Losses.**

(a) Net operating losses shall be treated as provided in paragraph (10.1) of subsection (b) of O.C.G.A. § [48-7-21](#). Any limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a taxable year shall be applied; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income.

(b) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under paragraph (10.1) of subsection (b) of O.C.G.A. § [48-7-21](#), the taxpayer may file an amended return within the time period prescribed by O.C.G.A. § [48-7-21](#) or alternatively may file an "application for a tentative carryback adjustment of the taxes" within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § [48-2-35](#). Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and examination. The Commissioner may disallow, without further action, any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be

without interest. If the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

(c) The provisions of § 108 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 108 provisions shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. The reduction in the Georgia net operating losses shall be determined by applying the Georgia apportionment percentage for the year of the discharge to the amount of the Internal Revenue Code § 108 net operating loss reduction determined pursuant to this regulation.

2. If the taxpayer files a consolidated federal income tax return, such provisions shall be applied on a separate entity basis. Thus, except as provided in this regulation, the Internal Revenue Service regulations relating to how to apply Internal Revenue Code § 108 to consolidated returns shall not apply. However, a determination under the federal consolidated return regulations that the separate entity has an amount of discharge of indebtedness income and or is required to reduce tax attributes shall also apply for Georgia purposes except that paragraph (a)(4) of Internal Revenue Service Regulation § 1.1502-28 shall not apply.

3. Any elections, with respect to the order of the tax attribute reductions, made for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations, shall also apply for Georgia purposes.

(d) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 381, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. If the taxpayer files a consolidated federal income tax return, such provisions shall be applied on a separate entity basis. However, when one or more members is a distributee of assets in a liquidation to which Internal Revenue Code § 332 applies and such member or members in the aggregate own stock of the liquidating corporation that satisfies the requirements of Internal Revenue Code § 1504(a)(2), such member or members shall succeed to the net operating loss in the same manner as provided in the Internal Revenue Service Regulations.

(e) The provisions of § 382 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 382 limitation shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. Such limitation shall be computed on a separate entity basis even when a consolidated federal income tax return is filed. Except as provided in this regulation, the Internal Revenue Service Regulations regarding how to apply Internal Revenue Code § 382 when a consolidated return is filed and paragraph (f) of Internal Revenue Service Regulation § 1.382-8 shall not apply for Georgia purposes.

2. A determination that an ownership change has occurred for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) shall apply for Georgia purposes.

3. Adjustments to prevent duplication of value contained in the Internal Revenue Code § 382 regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns if a consolidated federal return is filed) apply for Georgia purposes. However, the election to restore value provided in paragraph (c) of Internal Revenue Service Regulation § 1.382-8 shall not be available.

4. Whenever an ownership change occurs, an Internal Revenue Code § 382 limitation will apply to all Georgia pre-change losses that are carried over to a post-change year. "Pre-change years" end on or before the date of an ownership change, while "post-change years" end after the date of an ownership change. In a post-change year, the limitation on the use of any pre-change year Georgia net operating losses shall be determined by applying that post-change year's apportionment percentage to the Internal Revenue Code § 382 limitation for that post-change year determined pursuant to this regulation.

5. The Internal Revenue Code § 382 limitation does not reduce the total amount of pre-change Georgia net operating losses available for carry forward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

6. If there is any unused Internal Revenue Code § 382 limitation for Georgia purposes in a post-change year, the following year's limitation shall be increased by the excess amounts determined for Georgia tax purposes in a manner similar to Internal Revenue Code § 382(b)(2).

(f) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 384, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. When a consolidated federal return is filed, the adjustment for such Internal Revenue Code Section shall be determined on a separate entity basis. The limitation on offsetting losses against any recognized built in gains which are allocated to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains. The limitation on offsetting losses against any recognized gains which are apportioned to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains multiplied by the apportionment percentage for the recognition period taxable year.

(g) Consolidated net operating losses, including the application of §§ 108, 381, 382, and 384 of the Internal Revenue Code of 1986, shall be treated as provided in Regulation [560-7-3-.13](#).

**(6) "S" Elections.**

(a) The Federal treatment of a Qualified Subchapter S Subsidiary (QSSS) applies for income tax purposes but not net worth tax purposes.

(b) In the case of an S corporation where the Subchapter "S" election is not recognized as provided by O.C.G.A. §§ [48-7-21](#) and [48-7-27](#) the following shall apply:

1. Losses incurred in a year the corporation is treated as an S corporation shall not be carried to a year the corporation is treated as a C corporation.

2. Net operating losses incurred in a year the corporation is treated as a C corporation shall not be carried to a year the corporation is treated as an S Corporation. For example, in 2002 the corporation is treated as a C corporation and has a net operating loss. The corporation elects to forego the carryback period and carries the net operating loss forward. In 2003 the corporation is treated as an S corporation. The net operating loss from 2002 may not be claimed in 2003. In 2004 the corporation is treated as a C Corporation. The net operating loss from 2002 may be claimed in 2004. However, the year the corporation is treated as an S Corporation is included as a taxable year for the purpose of determining the number of taxable years that a net operating loss may be carried forward or back.

3. In order to pay the tax at the entity level, in a year the corporation is treated as a C corporation, the federal taxable income for purposes of O.C.G.A. § [48-7-21](#) shall be the federal taxable income of the Subchapter "S" corporation as computed pursuant to the Internal Revenue Code of 1986 including the separately stated items of income or loss (such as charitable contributions, the Section 179 deduction, etc.); provided, however, charitable contributions, the Section 179 deduction, and any other deduction which is subject to an Internal Revenue Code of 1986 limitation, shall be limited to what is allowed pursuant to the Internal Revenue Code of 1986 for a C-Corporation.

4. The federal treatment of a Qualified Subchapter S Subsidiary (QSSS) applies even in a year the parent corporation is treated as a C corporation for Georgia purposes.

**(7) Exclusion for Income from Sources Outside the United States.** With respect to the exclusion provided by subparagraph (A) of paragraph (8) of subsection (b) of O.C.G.A. § [48-7-21](#) the following shall apply:

(a) Only Federal C Corporations are allowed this Georgia exclusion. Also, income that flows from a pass-through entity to the C-Corp is eligible for this exclusion if the C-Corp is treated as an owner of a foreign corporation pursuant to the Internal Revenue Code.

(b) Only the net amount, after the Internal Revenue Code § 965(c) deduction or any other Internal Revenue Code deduction, is eligible for this exclusion.

(c) Georgia law does not provide deferral payment options like the options provided in §§ 965(h) and 965(i) of the Internal Revenue Code.

(d) An addition to Georgia taxable income must be made on the Georgia return for the expenses that are directly attributable to the net amount after the Internal Revenue Code § 965(c) deduction or any other Internal Revenue Code deduction.

(8) **Electing Pass-Through Entity.** See Regulation [560-7-3-03](#) for the rules regarding a Subchapter "S" corporation that makes the election to pay tax at the entity level.

(9) **Effective Date.** The principles set forth in this regulation will apply to taxable years beginning on or after January 1, 2022. Taxable years beginning before January 1, 2022 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2022 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-3-.06

**AUTHORITY:** O.C.G.A. §§ [48-2-12](#), [48-7-21](#), [48-7-51](#).

**HISTORY:** Original Rule entitled "Rate of Taxation of Corporations" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule entitled "Taxation of Corporations" adopted. F. Dec. 12, 1969; eff. Dec. 31, 1969.

**Amended:** F. July 24, 1970; eff. Aug. 13, 1970.

**Amended:** F. Sept. 27, 1974; eff. Oct. 17, 1974.

**Repealed:** New Rule of same title adopted. F. Dec. 2, 2005; eff. Dec. 22, 2005.

**Amended:** F. Dec. 7, 2006; eff. Dec. 27, 2006.

**Amended:** F. Nov. 29, 2018; eff. Dec. 19, 2018.

**Amended:** F. Dec. 7, 2021; eff. Dec. 27, 2021.

### **560-7-3-.08 Partnerships**

(1) Except as provided in Paragraph (8), partnerships, as such, are not subject to income taxation under Georgia Law, but are required to make returns of income. The members of a partnership are, however, taxable upon their distributive shares of net income of such partnership, whether distributed or not, and are required to include such distributive share in their returns. The net income of the partnership shall be computed in the same manner and on the same basis as the net income of an individual, except that the declaration of contributions or gifts is not permitted, as these are allowable deductions subject to the limitations provided by the Internal Revenue Code of 1986 to the respective partners in their returns.

(2) Each partner is required to include in the person's return, for the person's taxable year within which or with which the taxable year of the partnership ends, the person's distributive share of the net income of the partnership, whether or not distributed.

(3) Where the result of partnership operation is a net loss, the loss will be divisible by the partners in the same proportion as net income would have been divisible (or, if the partnership agreement provides for the division of a loss in a manner different from the division of a gain, in the manner so provided), and may be taken by the partners in their return of income.

(4) Payments made to a partner for services rendered or for interest on capital contributions are not deductible in computing the net income of the partnership, such payments being held to represent a division of partner profits.

(5) Every partnership, including foreign partnerships, the members of which are subject to taxation under Georgia law, shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this law, and shall include in the return the names and addresses of the members who would be entitled to share in the net income if distributed and the amount of the distributive share of each member. The return must be signed as provided by Regulation [560-3-2-.27](#).

(6) Where one or more of the members is a resident of Georgia but a member of a partnership doing business without the State of Georgia, such resident member or members shall include in the person's return the person's distributive share (whether distributed or not) of the net income of the partnership for the taxable year.

(7) Capital gains and losses shall be excluded in determining the partnership net income. Such sales and exchanges should be shown in detail on the Partnership return but the results should be transferred to the partners' returns in their proportionate share.

(8) **Electing Pass-Through Entity.** See Regulation [560-7-3-.03](#) for the rules regarding a partnership that makes the election to pay tax at the entity level.

(9) **Effective Date.** The principles set forth in this regulation will apply to taxable years beginning on or after January 1, 2022. Taxable years beginning before January 1, 2022 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2022 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-3-.08

**AUTHORITY:** O.C.G.A. §§ [48-2-12](#), [48-7-23](#), [48-7-24](#), [48-7-53](#).

**HISTORY:** Original Rule entitled "Partnerships" adopted. F. and eff. June 30, 1965.

**Repealed:** New Rule of same title adopted. F. Feb. 6, 2001; eff. Feb. 26, 2001.

**Amended:** F. Dec. 7, 2021; eff. Dec. 27, 2021.

# Department 560. RULES OF DEPARTMENT OF REVENUE

## Chapter 560-7. INCOME TAX DIVISION

### Subject 560-7-5. NET TAXABLE INCOME (CORPORATION)

#### 560-7-5-.02 Accounting Periods and Basis of Net Income

(1) The return of a taxpayer shall be made and the person's income computed for the person's taxable year, which means the fiscal year, or the calendar year if the person has not established a fiscal year. For purposes of this regulation, "person" means the same as is defined in O.C.G.A. § [48-1-2](#). The term fiscal year means an accounting period of 12 months ending on the last day of any month other than December. No fiscal year will be recognized unless before its close it was definitely established as an accounting period by the taxpayer and the books of such taxpayer were kept in accordance therewith. A person having no such fiscal year must make the person's return on the basis of the calendar year. The annual accounting period constituting a taxable year shall in no case be a period longer than 12 months.

(2) It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in the person's judgment best suited to the person's purpose. Each taxpayer is required by law to make a return of the person's true income. The person must, therefore, maintain such accounting records as will enable the person to do so.

(3) The taxable year of a person shall be the same as the person's taxable year for Federal income tax purposes.

(4) A person's method of accounting must be the same for Georgia income tax purposes as for Federal income tax purposes. If the person is allowed or is required to change an accounting method for Federal income tax purposes, such accounting method for Georgia will automatically be changed.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-5-.02

**AUTHORITY:** O.C.G.A. § [48-2-12](#).

**HISTORY:** Original Rule was filed on June 30, 1965.

**Amended:** Filed December 12, 1969; effective December 31, 1969.

**Amended:** F. Dec. 7, 2021; eff. Dec. 27, 2021.

# Department 560. RULES OF DEPARTMENT OF REVENUE

## Chapter 560-7. INCOME TAX DIVISION

### Subject 560-7-8. RETURNS AND COLLECTIONS

#### 560-7-8-.47 Qualified Education Expense Credit

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of O.C.G.A. § [48-7-29.16](#), which provides a credit for qualified education expenses. Other provisions and conditions regarding student scholarship organizations and the qualified education expense credit are set forth in O.C.G.A. § [48-7-29.16](#) and Chapter 2A of Title 20.

(2) **Definitions for purposes of O.C.G.A. § [48-7-29.16](#), Chapter 2A of Title 20, and this regulation.**

(a) "Qualified Education Expense Credit" means the credit allowed pursuant to O.C.G.A. § [48-7-29.16](#).

(b) "Fiscal Year" means the taxable year of the SSO.

(c) "Calendar Year Report" means the annual report that must be prepared on a calendar year basis and submitted to the Department of Revenue by January 12 of the year following the calendar year.

(d) "Audit Report" means the annual report that is prepared by an independent certified public accountant after completing the annual audit that is required by O.C.G.A. § [20-2A-2](#).

(e) "SSO" means a student scholarship organization as defined in O.C.G.A. § [20-2A-1](#).

(f) "Expenditure of Funds" means the expenditure of lawful money of the United States and does not include other intangible assets such as stocks, bonds, etc.

(g) "Federal Poverty Level" means the poverty guidelines issued each year in the Federal Register by the Department of Health and Human Services.

(3) **Coordination of Agencies.**

(a) Each SSO must annually submit notice to the Department of Education, in accordance with the Department of Education's guidelines, concerning their participation as an SSO.

(b) The Department of Education will maintain on its website a current list of all SSOs that have provided notice.

(4) **Annual Audit Report.**

(a) O.C.G.A. § [20-2A-2](#) requires that an annual audit be conducted by an independent certified public accountant. The audit shall be completed and the audit report issued within 120 days after the end of the SSO's fiscal year.

(b) The audit report must verify that the SSO has complied with all requirements of O.C.G.A. § [20-2A-2](#).

(c) As is required by O.C.G.A. § [20-2A-3](#), the annual audit report shall be submitted to the Department of Revenue on or before the January 12 date following completion of the audit report.

(5) **Fees or Assessments Report.** Each student scholarship organization shall submit an annual report to the Department of Revenue by January 12, showing the amount of any fees or assessments retained by the student scholarship organization during the calendar year. The report shall be prepared on a calendar year basis regardless of

the fiscal year of the SSO and shall be included on the Form IT-QEE-SSO2. Such information shall not be published on the Department's website.

**(6) Calendar Year Report.**

(a) The calendar year report shall be submitted by the SSO by January 12. Form "IT-QEE-SSO2" shall be the form used to submit the report. The report shall be submitted electronically in the manner specified by the Department.

(b) The report shall be prepared on a calendar year basis regardless of the fiscal year of the SSO.

(c) The report shall include the following:

1. The total number and dollar value of individual contributions and qualified education expense credits preapproved, individual contributions include contributions made by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

2. The total number and dollar value of corporate, trust, S corporation, and partnership contributions and qualified education expense credits preapproved;

3. The total number and dollar value of scholarships awarded to eligible students;

4. The total number of scholarship recipients whose families' adjusted gross income falls:

(i) Under 125% of the federal poverty level;

(ii) At or above 125% and below or at 250% of the federal poverty level;

(iii) Above 250% and below or at 400% of the federal poverty level; and

(iv) Above 400% of the federal poverty level;

5. The average scholarship dollar amount by adjusted gross income category as provided in subparagraph (c)4. of this paragraph. For scholarships awarded in a particular calendar year, the SSO shall use that calendar year's federal poverty level. The SSO shall consider the number of persons in the scholarship recipient's family when making the determination under subparagraph (c)4. of this paragraph.

(i) Example. For the 2019 calendar year Form "IT-QEE-SSO2" which is due on January 12, 2020, the SSO shall use the 2019 federal poverty level.

6. A list of donors (which includes the donor's name and address), including the dollar value of each donation and the dollar value of each preapproved qualified education expense credit; and

7. A copy of the audit conducted pursuant to O.C.G.A. § [20-2A-2](#).

8. The amount of the fees or assessments as required by paragraph (5) of this regulation.

(d) The Department of Revenue shall post on its website the information received from each SSO under subparagraphs (c)1. through (c)5. of this paragraph.

**(7) Examples of the Timing of Reports.**

(a) An SSO's first year begins on January 1, 2019, and ends on December 31, 2019. By January 12, 2020, the SSO must submit the required calendar year report and the required fees or assessments report for the calendar year that ended December 31, 2019. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2020. The audit report submitted on or before January 12, 2021, will include the results of the audit for the year ending December 31, 2019.

(b) An SSO's first fiscal year begins on May 1, 2019, and ends on April 30, 2020. By January 12, 2020, the SSO must submit the required calendar year report and the required fees or assessments report for the calendar year that ended December 31, 2019. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2020. The audit report submitted on or before January 12, 2021, will include the results of the audit for the fiscal year ending April 30, 2020.

(c) An SSO's first fiscal year begins on December 1, 2019, and ends on November 30, 2020. By January 12, 2020, the SSO must submit the required calendar year report and the required fees or assessments report for the calendar year that ended December 31, 2019. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2020. By January 12, 2021, they must submit the required calendar year report and the required fees and assessments report for the calendar year that ended December 31, 2020. No audit report will need to be submitted for this second year since the due date for completing the audit report falls after the deadline of January 12, 2021. The audit report submitted on or before January 12, 2022, will include the results of the audit for the fiscal year ending November 30, 2020.

**(8) Failure of the Audit Report to Verify or Failure to Submit the Audit Report as Required under O.C.G.A. § 20-2A-2.** Notwithstanding O.C.G.A. §§ [20-2A-7](#), [48-2-15](#), [48-7-60](#), [48-7-61](#) and paragraph (9) of this regulation, if the audit report submitted by the SSO fails to verify: that the SSO obligated its annual revenue received from donations for scholarships or tuition grants as required under O.C.G.A. § [20-2A-2](#); that obligated revenues were designated for specific student recipients within the time frame required under O.C.G.A. § [20-2A-2](#); and that all obligated and designated revenue distributed to a qualified school or program for the funding of multiyear scholarships or tuition grants complied with this regulation; then the Department shall post on its website the details of such failure to verify. If the audit report is not submitted by the required time, the SSO shall be deemed to have failed all three of the requirements. Until the noncompliant SSO submits an amended audit (or the required audit report in the case of a failure to submit the audit report by the required time), which to the satisfaction of the Department contains the verifications required under O.C.G.A. § [20-2A-2](#), the Department shall not preapprove any contributions to the noncompliant SSO.

**(9) Failure to Report and Confidentiality.** Any SSO that does not submit the audit report, the calendar year report, or fees or assessments report as required under this regulation or receives a qualified opinion or a disclaimer on their audit report from an independent certified public accountant or otherwise fails to comply with the requirements of Chapter 2A of Title 20 shall be given written notice of their failure and shall have 90 days from receipt of such notice to correct all deficiencies.

(a) If the SSO fails to correct all deficiencies within 90 days of receipt of notice from the Department, such SSO shall:

1. Be immediately removed from the Department of Education's list of approved SSOs.
2. Be required to cease all operations as an SSO and transfer all scholarship account funds to a properly operating SSO within 30 calendar days of receipt of notice from the Department of removal from the approved list; and
3. Have all applications for preapproval of tax credits under O.C.G.A. § [48-7-29.16](#) rejected by the Department on or after the date that the Department of Education removes the SSO from its list of approved SSOs.

(b) Except for information reported under subparagraphs (c)1. through (c)5. of paragraph (6) of this regulation and any failure to report and verify under paragraph (8) of this regulation, all information or reports provided by SSOs to the Department shall be confidential taxpayer information, governed by O.C.G.A. §§ [48-2-15](#), [48-7-60](#), and [48-7-61](#).

**(10) Credit Limitations for Individuals and Corporations.** The amount of qualified education expense credit granted to a taxpayer shall not exceed:

(a) For an individual taxpayer, except as otherwise provided in this paragraph, the credit is limited to the lesser of the actual amount expended or the dollar amount provided in O.C.G.A. § [48-7-29.16](#).

(b) For an individual taxpayer filing a married filing separate return, the credit is limited to the lesser of the actual amount expended or \$1,250.00 per tax year.

(c) For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single member limited liability company that is disregarded for income tax purposes), a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount expended or \$10,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their Georgia return because the entity paid tax at the pass through entity level in Georgia as provided in Regulation [560-7-3-.03](#). If the individual taxpayer is a member, partner, or shareholder in more than one pass through entity, the total credit allowed cannot exceed \$10,000; the individual taxpayer decides which pass through entities to include when computing Georgia income for purposes of the qualified education expense credit. All Georgia income, loss, and expense from the taxpayer selected pass through entities will be combined to determine Georgia income for purposes of the qualified education expense credit. Such combined Georgia income shall be multiplied by the applicable marginal tax rate to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership interests and shall separately be eligible for a credit as provided in this subparagraph. If the taxpayer(s) chooses to be preapproved pursuant to this subparagraph, for all purposes of claiming the credit they shall be subject to the provisions of this subparagraph and shall not be entitled to claim any other amounts provided in O.C.G.A. § [48-7-29.16](#) and this regulation. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated as allowed when the return is filed, the excess amount cannot be claimed by the taxpayer and cannot be carried forward.

1. Example: Taxpayer, an individual taxpayer, is the sole shareholder of A, Inc., an S corporation, Taxpayer is also a 50% partner, in BC Company, a partnership, and Taxpayer is also a 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified education expense credit for calendar year 2019 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is \$120,000, and that Taxpayer's share of Georgia income from BC Company is \$60,000, Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified education expense credit; therefore the Department preapproves Taxpayer for \$10,000 qualified education expense credit (since \$10,000 is less than \$10,350 (5.75% of \$180,000)), the applicable marginal tax rate for 2019 is 5.75%. Taxpayer makes a \$10,000 donation to the SSO within 60 days of receiving preapproval from the Department and before the end of 2019. When Taxpayer files Taxpayer's 2019 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$50,000 and A, Inc.'s actual Georgia income is \$60,000; Taxpayer's actual share of Georgia income from BC Company is \$20,000 and Taxpayer received a guaranteed payment from BC Company of \$15,000; Taxpayer's actual share of Georgia income from XYZ Company is \$5,000 (the Taxpayer can choose to include this company even though it was not considered at the time of preapproval), Taxpayer can only claim \$8,625 qualified education expense credit (which is 5.75% of the \$150,000 actual income from Taxpayer's selected pass through entities), and the extra \$1,375 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$8,625 qualified education expense credit claimed but not used on the taxpayer's 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(d) For a corporate taxpayer, fiduciary taxpayer, an S corporation that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-21](#), or a partnership that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-23](#), the credit is limited to the lesser of the actual amount expended or 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability. A fiduciary cannot pass-through the credit to its beneficiaries.

1. Example: Taxpayer, a Corporation, requests preapproval for the qualified education expense credit for calendar year 2019 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income tax liability for the 2019 tax year to be \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education expense credit for calendar year 2019. Taxpayer makes a \$75,000 donation to the SSO within 60 days of receiving preapproval from the Department and before the end of 2019. When Taxpayer files their 2019 Georgia income tax return, Taxpayer's income tax liability for tax year 2019 is \$80,000, Taxpayer can only claim \$60,000 of qualified

education expense credit (which is 75% of their actual income tax liability for tax year 2019), and the extra \$15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified education expense credit claimed but not used on the taxpayer's 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(e) Except as provided in subparagraph (10)(d) of this regulation, when the taxpayer is a pass-through entity which has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (10)(c) of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the student scholarship organization so that the preapproval, claiming, and reporting forms can be filed in the name of its members, shareholders, or partners.

(11) **Credit Cap.** In no event shall the total amount of tax credits allowed under O.C.G.A. § [48-7-29.16](#) exceed:

(a) One hundred million dollars for calendar years beginning on January 1, 2019, and ending on December 31, 2028; and

(b) Fifty-eight million dollars for the calendar year beginning on January 1, 2029, and for all subsequent calendar years.

(12) **Reporting the Availability of the Credit.** The Department shall post on its website the current amount of qualified education expense credits available.

(13) **Preapproval of the Contribution.**

(a) The taxpayer must electronically submit Form IT-QEE-TP1 through the Georgia Tax Center to request preapproval of the qualified education expense credit from the Department of Revenue. The Department will not preapprove any qualified education expense credit where the Form IT-QEE-TP1 is submitted or filed in any other manner. Each SSO shall be registered with the Department to facilitate the web-based preapproval process for Form IT-QEE-TP1.

(b) The contributor should not submit Form IT-QEE-TP1 to the Department of Revenue until the contributor's recipient SSO is listed on the Department of Education's website. If the contributor's recipient SSO is not listed on the website at the time that the Department of Revenue attempts to verify the SSO's listing, the Department of Revenue shall deny the request. If at a later date the contributor's recipient SSO becomes listed, it will be necessary for a new Form IT-QEE-TP1 to be submitted by the contributor to the Department of Revenue.

(c) The electronic Form "IT-QEE-TP1" shall include the following information:

1. The name of the SSO listed on the Department of Education's website to which the contribution will be made. The SSO should be listed on the Department of Education's website before the Form "IT-QEE-TP1" is filed with the Department of Revenue.

2. The taxpayer identification number of the SSO to which the contribution will be made.

3. The name, address and taxpayer identification number of the contributor.

4. The type of taxpayer.

5. If the contributor is an individual, the filing status.

6. If the contributor is an individual filing a joint return, the name and identification number of the joint filer.

7. The intended contribution amount.

8. If the contributor is a corporation, fiduciary, electing S corporation, or electing partnership, 75% of the estimated income tax liability the corporation, fiduciary, electing S corporation, or electing partnership expects for the tax year of the corporation, fiduciary, S corporation, or partnership in which the contribution will be made.

9. Tax year end of the contributor.

10. Calendar year in which the contribution will be made.

11. Any other information the Commissioner of the Department of Revenue may require.

12. Certification that all information contained on the Form "IT-QEE-TP1" is true to his/her best knowledge and belief and is submitted for the purpose of obtaining preapproval from the Commissioner.

(d) The qualified education expense credit shall be allowed on a first-come, first-served basis. The date the Form IT-QEE-TP1 is electronically submitted shall be used to determine such first-come, first-served basis.

(e) The Department will notify each taxpayer and the taxpayer's selected SSO of the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QEE-TP1 was received.

(f) On the day any Form IT-QEE-TP1 is received for a calendar year that causes the calendar year limit in paragraph (11) of this regulation to be reached, then the remaining tax credits shall be allocated among the applicants who submitted the Form IT-QEE-TP1 on the day the calendar year limit was exceeded on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § [48-7-29.16](#) and this regulation. Only credit amounts on Form IT-QEE-TP1(s) received on the day the calendar year limit was exceeded shall be allocated on a pro rata basis.

(g) The contribution must be made by the taxpayer within sixty days of the date of the preapproval notice received from the Department and within the calendar year in which it was preapproved.

(h) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § [48-7-29.16](#), then the amount of the qualified education expense credit shall not be preapproved or the preapproved qualified education expense credit shall be retroactively denied. With respect to such denied credit, tax and interest shall be due if the qualified education expense credit has already been claimed.

(i) Notwithstanding any laws to the contrary, the Department shall not take any adverse action against donors to SSOs if the Commissioner preapproved a donation for a tax credit prior to the date the SSO is removed from the Department of Education list pursuant to O.C.G.A. § [20-2A-7](#), and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § [48-7-29.16\(f\)\(3\)](#).

(j) Once the calendar year limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § [48-7-29.16](#), for such calendar year. If any Form IT-QEE-TP1 is received after the calendar year limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(14) **Letter of Confirmation.** Form IT-QEE-SSO1 shall be provided by the SSO to the taxpayer to confirm the contribution.

(15) **Claiming the Credit.** A taxpayer claiming the qualified education expense credit, unless indicated otherwise by the Commissioner, must submit Form IT-QEE-TP2 with the taxpayer's Georgia tax return when the qualified education expense credit is claimed. A software program's Form IT-QEE-TP2 that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(16) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files their tax return, the Form IT-QEE-SSO1 shall be required to be attached to the return only if the Internal Revenue Service allows such attachments when the data is transmitted to the Department. In the event the taxpayer files an electronic return and such information is not attached because the Internal Revenue Service does not, at the time of such electronic filing,

allow electronic attachments to the Georgia return, such information shall be maintained by the taxpayer and made available upon request by the Commissioner.

(17) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, any amount in excess of the credit amount limits in paragraph (10) of this regulation shall not be eligible for carryforward to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(18) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § [48-7-29.16\(h\)\(1\)](#) provides that no qualified education expense credit shall be allowed under O.C.G.A. § [48-7-29.16](#), with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. If the taxpayer is allowed the state income tax deduction in place of the charitable contribution deduction as allowed by the Internal Revenue Service, for purposes of this paragraph such deduction shall be considered a charitable contribution to the extent such deduction is allowed federally. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal deduction taken on a federal return for which a Georgia qualified education expense credit is allowed under O.C.G.A. § [48-7-29.16](#).

(a) If a taxpayer's itemized deductions are limited federally (and therefore for Georgia purposes) because their Federal Adjusted Gross Income exceeds a certain amount, the taxpayer is only required to add back to Georgia taxable income that portion of the federal charitable deduction that was actually deducted pursuant to the following formula. The federal charitable deduction that must be added back to Georgia taxable income shall be the amount of the federal charitable contribution relating to the qualified education expense credit multiplied by the following ratio. The numerator is the amount of the itemized deductions subject to limitation and allowed as itemized deductions after the limitation is applied. The denominator is the total itemized deductions that are subject to limitation before the limitation is applied.

1. For example. A taxpayer has a \$2,500 charitable contribution relating to the qualified education expense credit and has property taxes of \$1,500 both of which are subject to limitation. The taxpayer also has investment interest expense of \$10,000 (which is not limited). Accordingly, the taxpayer's total itemized deductions before limitation are \$14,000. After applying the federal limitation, the taxpayer is allowed \$13,000 in itemized deductions. As such only \$3,000 (\$13,000 less the \$10,000 investment interest expense which is not limited) of the original \$4,000 charitable deduction and property taxes are allowed to be deducted. Applying the ratio from the subparagraph above, the taxpayer must add back \$1,875 of the charitable contribution to their Georgia taxable income ( $(\$2,500) \times (\$3,000 / \$4,000)$ ).

(19) **Scholarships.**

(a) For all scholarships including multi-year scholarships, the SSO shall deliver the scholarship check directly to the qualified school or program selected as a result of the private choice of the parent or guardian of the child to whom the scholarship was awarded. The parent or guardian of the student shall come to such qualified school or program and restrictively endorse the check to such qualified school or program for deposit into the account of such qualified school or program as is required by O.C.G.A. § [20-2A-5](#). Such qualified school or program shall not be allowed to endorse the check over to a different qualified school or program.

(b) In the event an SSO awards a multi-year scholarship, the SSO may disburse the entire scholarship at the time the scholarship is awarded.

(c) For all scholarships including multi-year scholarships, the qualified school or program shall separately account for each scholarship awarded. Additionally, the income earned on the portion of the scholarship which has not yet been applied to tuition shall be separately accounted for and shall be used to provide tuition for such eligible student. The scholarship shall be applied to tuition on the same due dates as the general population of students of such school.

(d) In making a multi-year distribution to a qualified school or program, the SSO shall require that if the designated student becomes ineligible or for any other reason the qualified school or program elects not to continue

disbursement of the multi-year scholarship or tuition grant to the designated student for all the projected years, then the qualified school or program shall immediately return the remaining funds to the SSO and the income earned on such portion. Upon receipt of such returned scholarship, such SSO shall allocate and obligate such money for scholarships or tuition grants on or before the end of the following calendar year; 100% of such returned money (including the remaining funds and the income earned on such portion) shall be allocated and obligated. Once a qualified school or program receives such returned money and such income earned on such returned money, 100% of such amounts received shall be used for an eligible student.

1. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants for which the student scholarship organization distributes the obligated and designated revenues to a qualified school or program annually rather than the entire amount, if the designated student becomes ineligible or for any other reason the student scholarship organization elects not to continue disbursement for all years, then the student scholarship organization shall designate any remaining previously obligated revenues for a new specific student recipient on or before the end of the following calendar year.

(20) **Designation of Contributions.** The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified education expense for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer.

(a) In soliciting contributions, an SSO shall not represent, or direct a qualified school or program to represent, that in exchange for contributing to the SSO, a taxpayer shall receive a scholarship for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer. Their status as an SSO shall be revoked for any such organization which violates this subparagraph and as such the SSO shall be removed from the Department of Education's list of approved SSOs and the Department shall not preapprove any contributions to such SSO.

(21) **Effective Date.** This rule is applicable to years beginning on or after January 1, 2022. Years beginning before January 1, 2022 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2022 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-8-.47

**AUTHORITY:** O.C.G.A. §§ [48-2-12](#), [48-7-29.16](#).

**HISTORY:** Original Rule entitled "Qualified Education Expense Credit" adopted. F. Sept. 4, 2009; eff. Sept. 24, 2009.

**Amended:** F. Apr. 27, 2010; eff. May 17, 2010.

**Amended:** F. Dec. 14, 2011; eff. Jan. 3, 2012.

**Amended:** F. Sep. 23, 2013; eff. Oct. 13, 2013.

**Amended:** F. Nov. 8, 2013; eff. Nov. 28, 2013.

**Amended:** F. Nov. 6, 2018; eff. Nov. 26, 2018.

**Amended:** F. Nov. 21, 2019; eff. Dec. 11, 2019.

**Note:** Correction of non-substantive typographical errors in subparagraph (10)(c)1., "Inc" and "Inc's" corrected to "Inc." and "Inc.'s" respectively. Effective December 11, 2019.

**Amended:** F. Dec. 7, 2021; eff. Dec. 27, 2021.

## **560-7-8-.57 Qualified Rural Hospital Organization Expense Tax Credit**

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § [48-7-29.20](#).

(2) **Coordination of Agencies.** The Georgia Department of Community Health is the state agency responsible for approving rural hospital organizations and administering O.C.G.A. § [31-8-9.1](#). The Department of Community Health shall maintain a current list of approved rural hospital organizations on its website.

(3) **Definitions.** As used in this regulation, the terms "qualified rural hospital organization expense" and "rural hospital organization" shall have the same meaning as in O.C.G.A. § [48-7-29.20](#).

(4) **Credit Amount.** From January 1 to June 30 of each calendar year of the credit, the amount of qualified rural hospital organization expense tax credit allowed a taxpayer shall be as follows:

(a) For an individual taxpayer, the credit amount shall not exceed the actual amount expended or \$5,000, whichever is less.

(b) For an individual taxpayer filing married filing separate, the credit amount shall not exceed the actual amount expended or \$5,000, whichever is less.

(c) For individual taxpayers filing married filing joint, the credit amount shall not exceed the actual amount expended or \$10,000, whichever is less.

1. Example: Taxpayers, married couple filing joint, request preapproval for the qualified rural hospital organization expense tax credit for calendar year 2019 by electronically submitting Form IT-QRHOE-TP1 through the Georgia Tax Center. On Form IT-QRHOE-TP1 Taxpayers' intended contribution for 2019 is \$7,100, therefore the Department preapproves Taxpayers for \$7,100. Taxpayers make a \$3,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before the end of 2019 (this is the only amount contributed by taxpayers to an approved rural hospital organization in 2019). When taxpayers file their 2019 Georgia income tax return, Taxpayers can only claim \$3,000 qualified rural hospital organization expense tax credit (which is the actual amount contributed), and the extra \$4,100 that was preapproved but not contributed cannot be claimed by Taxpayers and cannot be carried forward. Any amount of the \$3,000 qualified rural hospital organization expense tax credit claimed but not used on the taxpayers' 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(d) For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single member limited liability company that is disregarded for income tax purposes), a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount expended or \$10,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their Georgia return because the entity paid tax at the pass through entity level in Georgia as provided in Regulation [560-7-3-.03](#). If the individual taxpayer is a member, partner, or shareholder in more than one pass through entity, the total credit allowed cannot exceed \$10,000; the individual taxpayer decides which pass through entities to include when computing Georgia income for purposes of the qualified rural hospital organization expense tax credit. All Georgia income, loss, and expense from the taxpayer selected pass through entities will be combined to determine Georgia income for purposes of the qualified rural hospital organization expense tax credit. Such combined Georgia income shall be multiplied by the applicable marginal tax rate to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership interests and shall separately be eligible for a credit as provided in this subparagraph. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated as allowed when the return is filed, the excess amount cannot be claimed by the taxpayer and cannot be carried forward.

1. Example: Taxpayer, an individual taxpayer, is the sole shareholder of A, Inc, an S corporation, Taxpayer is also a 50% partner, in BC Company, a partnership, and Taxpayer is also a 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified rural hospital

organization expense tax credit for calendar year 2019 by submitting Form IT-QRHOE-TP1. On Form IT-QRHOE-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is \$120,000, and that Taxpayer's share of Georgia income from BC Company is \$60,000, Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified rural hospital organization expense tax credit; therefore the Department preapproves Taxpayer for \$10,000 qualified rural hospital organization expense tax credit (since \$10,000 is less than \$10,350 (5.75% of \$180,000)), the applicable marginal tax rate for 2019 is 5.75%. Taxpayer makes a \$10,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before the end of 2019. When Taxpayer files Taxpayer's 2019 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$50,000 and A, Inc.'s actual Georgia income is \$60,000; Taxpayer's actual share of Georgia income from BC Company is \$20,000 and Taxpayer received a guaranteed payment from BC Company of \$15,000; Taxpayer's actual share of Georgia income from XYZ Company is \$5,000 (the Taxpayer can choose to include this company even though it was not considered at the time of preapproval), Taxpayer can only claim \$8,625 qualified rural hospital organization expense tax credit (which is 5.75% of the \$150,000 actual income from Taxpayer's selected pass through entities), and the extra \$1,375 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$8,625 qualified rural hospital organization expense tax credit claimed but not used on the taxpayer's 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(e) For a corporation taxpayer, fiduciary taxpayer, an S corporation that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-21](#), or a partnership that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-23](#), the credit amount shall not exceed the actual amount expended or 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, whichever is less. A fiduciary cannot pass-through the credit to its beneficiaries.

1. Example: Taxpayer, a corporation, requests preapproval for the qualified rural hospital organization expense tax credit for calendar year 2019 by electronically submitting Form IT-QRHOE-TP1 through the Georgia Tax Center. On Form IT-QRHOE-TP1 Taxpayer's intended contribution for 2019 is \$100,000; and Taxpayer's estimated income tax liability for the 2019 tax year is \$150,000; therefore the Department preapproves Taxpayer for \$100,000 qualified rural hospital organization expense tax credit for calendar year 2019. Taxpayer makes a \$100,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before the end of 2019. When Taxpayer files their 2019 Georgia income tax return, Taxpayer's income tax liability for tax year 2019 is \$80,000, Taxpayer can only claim \$60,000 of qualified rural hospital organization expense tax credit (\$60,000 is 75% of their actual Georgia income tax liability for tax year 2019, which is less than \$100,000), and the extra \$40,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified rural hospital organization expense tax credit claimed but not used on the taxpayer's 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(f) Except as provided in subparagraph (4)(e) of this regulation, when the taxpayer is a pass-through entity which has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (4)(d) of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the rural hospital organization so that the preapproval, claiming and reporting forms can be filed in the name of its members, shareholders, or partners.

(g) From July 1 to December 31 of each calendar year of the credit, the amount of qualified rural hospital organization expense tax credit allowed a taxpayer shall be as follows:

1. For an individual taxpayer, the credit amount shall not exceed the actual amount expended.
2. For an individual taxpayer filing married filing separate, the credit amount shall not exceed the actual amount expended.
3. For individual taxpayers filing married filing joint, the credit amount shall not exceed the actual amount expended.

4. For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single member limited liability company that is disregarded for income tax purposes), a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the actual amount expended per tax year; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their Georgia return because the entity paid tax at the pass through entity level in Georgia as provided in Regulation [560-7-3-.03](#). From July 1 to December 31, the option to indicate pass-through entity ownership is not available on the Georgia Tax Center, since the credit is not limited for individual taxpayers during this time period. Regardless, such members may choose to apply the pass-through entity provisions when claiming the credit or such provisions are applied if subparagraph (4)(g)6. of this regulation applies.

5. For a corporation taxpayer, fiduciary taxpayer, an S corporation that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-21](#), or a partnership that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-23](#), the credit amount shall not exceed the actual amount expended or 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, whichever is less. A fiduciary cannot pass-through the credit to its beneficiaries. See example in subparagraph (4)(e)1 of this regulation.

6. Except as provided in subparagraph (4)(g)5. of this regulation, when the taxpayer is a pass-through entity which has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (4)(g)4. of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the rural hospital organization so that the preapproval, claiming, and reporting forms can be filed in the name of its members, shareholders, or partners.

(h) A taxpayer may apply to make a donation to multiple rural hospital organizations or may apply to make multiple donations to the same rural hospital organization or may apply to make a donation both before and after July 1; provided, however, each donation must be applied for separately.

(i) Unspecified or undesignated contributions will be treated as provided in O.C.G.A. § [48-7-29.20](#).

(5) **Credit Cap.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § [48-7-29.20](#) exceed \$60 million per taxable year.

(6) **Per Individual Rural Hospital Organization Limitation.** For each calendar year of the credit, no more than \$4 million of credit shall be preapproved for any individual rural hospital organization. On the day and time any Form IT-QRHOE-TP1 is received for a calendar year that causes the per individual rural hospital organization limitation in this paragraph to be reached, then any subsequent applicants for such individual rural hospital organization shall be denied. There shall be no proration based on the date an application is received. The Department shall notify such individual rural hospital organization if the \$4 million limitation is reached. Such rural hospital organization shall within 15 days of the date of such notification, notify the Georgia Department of Community Health that the \$4 million limitation was reached.

(a) If a taxpayer is denied preapproval for this tax credit by the Department due to the per individual rural hospital organization limitation in paragraph (6) of this regulation, the taxpayer may reapply for preapproval and list a rural hospital organization from the Department of Community Health's list of approved rural hospital organizations that has not reached the per individual rural hospital organization limitation. For purposes of priority in case the credit cap is reached, the taxpayer's date of re-application will govern.

(7) **Individual Rural Hospital Organization Per Tax Type Preapproval Limitations.** Subject to the aggregate limit in paragraph (5) of this regulation and the per individual rural hospital organization limitation in paragraph (6) of this regulation, the Department shall only preapprove contributions for this tax credit in the following manner:

(a) From January 1<sup>st</sup> to June 30<sup>th</sup> of each calendar year of the credit, the Department shall only preapprove credits for each rural hospital organization from individual taxpayers in an aggregate amount not to exceed \$2 million, and from corporate, fiduciary, electing S corporation, and electing partnership taxpayers in an aggregate amount not to exceed \$2 million. The Department shall notify such individual rural hospital organization if either \$2 million limit is reached; and

(b) On the day and time any Form IT-QRHOE-TP1 is received for a calendar year that causes the per tax type preapproval limit in paragraph (7)(a) of this regulation to be reached, then any subsequent applicants for such tax type for such individual rural hospital organization shall be denied. There shall be no proration based on the date an application is received.

(c) If an individual taxpayer, or corporate, fiduciary, electing S corporation, or electing partnership taxpayer is denied preapproval for the tax credit between January 1<sup>st</sup> and June 30<sup>th</sup> of a calendar year, due to the limitation in paragraph (7)(a) of this regulation, then the taxpayer may reapply for preapproval on or after July 1<sup>st</sup> of that calendar year for such individual rural hospital organization but will not be given any priority over other applicants. Such taxpayer may alternatively reapply for preapproval for a different individual rural hospital organization. For purposes of priority in case the credit cap is reached, the taxpayer's date of re-application will govern.

(d) From July 1<sup>st</sup> to December 31<sup>st</sup> of each calendar year of the credit, the Department shall preapprove contributions from individual taxpayers and corporate, fiduciary, electing S corporation, and electing partnership taxpayers until the annual credit cap is reached.

(e) For all preapprovals requested for each calendar year of the credit, the Department shall review the reports required by paragraphs (14) and (15) of this regulation. In the event preapproved contributions are not contributed or the rural hospital organization fails to timely file the report required by paragraph (14) of this regulation or the taxpayer fails to timely file the report required by paragraph (15) of this regulation for the period for which a paragraph (15) report was required, the Department shall add any such uncontributed or not timely reported amount to the amount available for each respective calendar year of the credit and adjust any used individual rural hospital organization limitation and adjust any used individual rural hospital organization per tax type preapproval limitation. Such uncontributed amount shall be added within a reasonable time of the Department's determination and until the end of the calendar year; and such amount shall be added directly to the total tax credit amount available for preapproval on the Georgia Tax Center and to the respective individual rural hospital's Georgia Tax Center available amount for preapproval. The Department shall notify the individual rural hospital organization of such adjusted limits. If such rural hospital organization had previously met the \$4 million limitation, they shall within 15 days of the date of such notification, notify the Georgia Department of Community Health of the additional rural hospital limitation amount. Any taxpayer previously denied preapproval of the credit because the annual credit cap had previously been reached, must reapply as provided in subparagraph (7)(c) of this regulation and will not be given any priority over other applicants.

**(8) Mandatory Electronic Preapproval Application.** The preapproval process allocates the credit caps. A taxpayer seeking preapproval to claim the tax credits under paragraph (4) of this regulation must electronically submit Form IT-QRHOE-TP1 through the Georgia Tax Center. The Department will not preapprove any qualified rural hospital organization expense tax credit where Form IT-QRHOE-TP1 is submitted or filed in any other manner. Each rural hospital organization shall be registered with the Department to facilitate the web-based preapproval process for Form IT-QRHOE-TP1.

(a) The taxpayer should not file Form IT-QRHOE-TP1 with the Department of Revenue until the taxpayer's recipient rural hospital organization is listed on the Department of Community Health's website. If the taxpayer's recipient rural hospital organization is not listed on the Department of Community Health's website at the time that the Department of Revenue attempts to verify the rural hospital organization's listing, the Department of Revenue shall deny the preapproval request. If at a later date the taxpayer's recipient rural hospital organization becomes listed, the taxpayer will have to submit a new Form IT-QRHOE-TP1 to the Department of Revenue.

(b) The qualified rural hospital organization expense tax credit shall be allowed on a first-come, first-served basis. The date and time the Form IT-QRHOE-TP1 is electronically submitted shall be used to determine such first-come, first-served basis. There shall be no proration based on the date an application is received.

(c) The Department will notify each taxpayer and the taxpayer's selected rural hospital organization of the contribution amount, the tax credit certificate number, and the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QRHOE-TP1 was received.

(d) The contribution must be made by the taxpayer within 180 days of the date of the preapproval notice received from the Department and within the calendar year in which it was preapproved.

(e) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § [48-7-29.20](#) and this regulation, then the amount of the qualified rural hospital organization expense tax credit shall not be preapproved or, if already claimed, the preapproved qualified rural hospital organization expense tax credit shall be disallowed. With respect to such disallowed credit, tax and interest shall be due.

(f) Notwithstanding any laws to the contrary, the Department shall not disallow donors' credits for contributions to rural hospital organizations if the Commissioner preapproved a donation for a tax credit prior to the date the rural hospital organization is removed from the Department of Community Health list pursuant to O.C.G.A. § [31-8-9.1](#), and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § [48-7-29.20\(e\)\(3\)](#) and this regulation.

(g) Once the calendar year limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § [48-7-29.20](#), for such calendar year unless subsequently uncontributed amounts result in the calendar year limit not being reached. If any Form IT-QRHOE-TP1 is received after the calendar year limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date even in the event that the calendar year limit is subsequently not reached due to uncontributed amounts.

(9) **Letter of Confirmation.** Form IT-QRHOE-RHO1 shall be provided by the rural hospital organization to the taxpayer to confirm the contribution within 15 days of the contribution.

(10) **Claiming the Credit.** A taxpayer claiming the qualified rural hospital organization expense tax credit, unless indicated otherwise by the Commissioner, must submit Form IT-QRHOE-TP2 with the taxpayer's Georgia tax return when the qualified rural hospital organization expense tax credit is claimed. An electronically filed Georgia income tax return that includes the software's electronic Form IT-QRHOE-TP2 satisfies this requirement.

(11) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, any amount in excess of the credit amount limits in paragraph (4) of this regulation shall not be eligible for carry forward to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(12) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § [48-7-29.20\(g\)](#) provides that no qualified rural hospital organization expense tax credit shall be allowed under O.C.G.A. § [48-7-29.20](#), with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. If the taxpayer is allowed the state income tax deduction in place of the charitable contribution deduction as allowed by the Internal Revenue Service, for purposes of this paragraph such deduction shall be considered a charitable contribution to the extent such deduction is allowed federally. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal deduction taken on a federal return for which a Georgia qualified rural hospital organization expense tax credit is allowed under O.C.G.A. § [48-7-29.20](#).

(a) If a taxpayer's itemized deductions are limited federally (and therefore for Georgia purposes) because their Federal Adjusted Gross Income exceeds a certain amount, the taxpayer is only required to add back to Georgia taxable income that portion of the federal charitable deduction that was actually deducted pursuant to the following formula. The federal charitable deduction that must be added back to Georgia taxable income shall be the amount of the federal charitable contribution relating to the qualified rural hospital organization expense tax credit multiplied

by the following ratio. The numerator is the amount of the itemized deductions subject to limitation and allowed as itemized deductions after the limitation is applied. The denominator is the total itemized deductions that are subject to limitation before the limitation is applied.

1. For example. A taxpayer has a \$2,500 charitable contribution relating to the qualified rural hospital organization expense tax credit (credit amount is \$2,500) and has property taxes of \$1,500 both of which are subject to limitation. The taxpayer also has investment interest expense of \$10,000 (which is not limited). Accordingly, the taxpayer's total itemized deductions before limitation are \$14,000. After applying the federal limitation, the taxpayer is allowed \$13,000 in itemized deductions. As such only \$3,000 (\$13,000 less the \$10,000 investment interest expense which is not limited) of the original \$4,000 charitable deduction and property taxes are allowed to be deducted. Applying the ratio from the subparagraph above, the taxpayer must add back \$1,875 of the charitable contribution to their Georgia taxable income ( $\$2,500 \times (\$3,000 / \$4,000)$ ).

(13) **Designation of Contributions.** The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified rural hospital organization expense tax credit for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer.

(14) **Reports by Rural Hospital Organization.** Rural hospital organizations must submit a monthly Form IT-QRHOE-RHO2 to the Department of Revenue. The report shall be due within 90 days of the end of each respective month. The report shall be submitted electronically through the Georgia Tax Center. The report shall be prepared on a monthly basis regardless of the fiscal year of the rural hospital organization. If the rural hospital organization fails to timely file the report, the donor taxpayer shall not be allowed the credit. The taxpayer may again request preapproval for such denied donation subject to the credit caps. The report shall include the following for each respective month:

(a) The month and year that is being reported:

(b) The total number and dollar value of individual contributions and qualified rural hospital organization expense tax credits preapproved. Individual contributions include contributions made by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

(c) The total number and dollar value of corporate, fiduciary, S corporation, and partnership contributions and qualified rural hospital organization expense tax credits preapproved;

(d) A list of donors (which includes the donor's name, address, and identification number), including the dollar value of each donation, the dollar value of each preapproved qualified rural hospital organization expense tax credit, and each Department issued tax credit certificate number; and

(e) Any other information required by the Commissioner.

(15) **Report by Donor.** Until the time the Department changed the Georgia Tax Center on June 26, 2019, each taxpayer that received preapproval of the qualified rural hospital organization expense tax credit had to report to the Department the amount of the contribution and the Department issued tax credit certificate number and had to provide a copy of the Form IT-QRHOE-RHO1 to the Department. Such information had to be submitted within 30 days of the date of the contribution and had to be submitted electronically through the Georgia Tax Center. If the taxpayer failed to timely file the report, the taxpayer shall not be allowed the credit. The taxpayer may again request preapproval for such denied donation subject to the credit caps.

(16) **Confirmation of Donations.** Upon the rural hospital organization's confirmation to the Department, as required by paragraph (14) of this regulation, of the receipt of donations that have been preapproved by the Department, any taxpayer preapproved by the Department shall receive the full benefit of the qualified rural hospital organization expense tax credit even though the rural hospital organization to which the taxpayer made a donation does not properly comply with the reports or filings required by O.C.G.A. § [48-7-29.20](#).

(17) **Website posting.** The Department shall post the following in a prominent location on the Department's website:

(a) All pertinent timelines relating to the tax credit, including but not limited to:

1. Beginning date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;
2. Ending date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;
3. Beginning date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period;
4. Ending date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period; and
5. Date by which preapproved contributions are required to be sent to the rural hospital organization;

(b) The list and ranking order of rural hospital organizations eligible to receive contributions under O.C.G.A. § [31-8-9.1\(b\)\(1\)](#).

(c) A monthly progress report including:

1. Total preapproved contributions to date by rural hospital organizations;
2. Total contributions received to date by rural hospital organizations;
3. Total aggregate amount of preapproved contributions made to date; and
4. Aggregate amount of tax credits available; and

(d) A list of all preapproved contributions that were made to an unspecified or undesignated rural hospital organization and the rural hospital organizations that received such contributions.

**(18) Preapproval Periods.**

(a) **Beginning of an Approval or Preapproval Period.** Pursuant to O.C.G.A. § [48-2-39](#), when the approval or preapproval period (January 1 through December 31) for the qualified rural hospital organization expense tax credit begin on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, such beginning dates shall be postponed until the first day following which is not a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed. Preapprovals, which must be requested through the Department's Georgia Tax Center, may be submitted beginning at 8:00AM on such following day.

(b) **First-Come, First-Served Basis.** Any application submitted on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, shall be considered to have been submitted on such date and time and shall not be prorated based on the date the application is received. This paragraph shall only apply to an application submitted on a day following the beginning date of the approval or preapproval period as provided by subparagraph (18)(a) of this regulation.

(19) **Sunset Date.** O.C.G.A. § [48-7-29.20](#), the qualified rural hospital organization expense tax credit, shall be repealed on December 31, 2024.

(20) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2022. Years beginning before January 1, 2022 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2022 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-8-.57

**AUTHORITY:** O.C.G.A. §§ [48-2-12](#), [48-7-29.20](#).

**HISTORY:** Original Rule entitled "Qualified Rural Hospital Organization Expense Tax Credit" adopted. F. Sep. 21, 2016; eff. Oct. 11, 2016.

**Amended:** F. July 13, 2017; eff. Aug. 2, 2017.

**Amended:** F. Sep. 5, 2017; eff. Sep. 25, 2017.

**Amended:** F. Aug. 6, 2018; eff. Aug. 26, 2018.

**Amended:** F. Sep. 20, 2019; eff. Oct. 10, 2019.

**Amended:** F. Dec. 7, 2021; eff. Dec. 27, 2021.

### **560-7-8-.60 Qualified Education Donation Tax Credit**

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § [48-7-29.21](#).

(2) **Definitions.** As used in this regulation, the terms "qualified education donation" and "recipient" shall have the same meaning as in O.C.G.A. § [48-7-29.21](#).

(3) **Credit Amount.** The amount of qualified education donation tax credit allowed a taxpayer shall be as follows:

(a) For an individual taxpayer, the credit amount shall not exceed \$1,000, or the actual amount expended, whichever is less.

(b) For an individual taxpayer filing married filing separate, the credit amount shall not exceed \$1,250, or the actual amount expended, whichever is less.

(c) For individual taxpayers filing married filing joint, the credit amount shall not exceed \$2,500, or the actual amount expended, whichever is less.

(d) For an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount expended or \$10,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their Georgia return because the entity paid tax at the pass through entity level in Georgia as provided in Regulation [560-7-3-.03](#). If the individual taxpayer is a member, partner, or shareholder in more than one pass through entity, the total credit allowed cannot exceed \$10,000; the individual taxpayer decides which pass through entities to include when computing Georgia income for purposes of the qualified education donation tax credit. All Georgia income, loss, and expense from the taxpayer selected pass through entities will be combined to determine Georgia income for purposes of the qualified education donation tax credit. Such combined Georgia income shall be multiplied by the applicable marginal tax rate to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership interests and shall separately be eligible for a credit as provided in this subparagraph. If the taxpayer(s) chooses to be preapproved pursuant to this subparagraph, for all purposes of claiming the credit they shall be subject to the provisions of this subparagraph and shall not be entitled to claim any other amounts provided in O.C.G.A. § [48-7-29.21](#) and this regulation. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated as allowed when the return is filed, the excess amount cannot be claimed by the taxpayer and cannot be carried forward.

1. Example: Taxpayer, an individual taxpayer, is the sole shareholder of A, Inc., an S corporation, Taxpayer is also a 50% partner, in BC Company, a partnership, and Taxpayer is also a 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified education donation tax credit for calendar year 2019 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is \$120,000, and that Taxpayer's share of Georgia income from BC Company is \$60,000, Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified education donation tax credit; therefore the Department preapproves Taxpayer for \$10,000 qualified education donation tax credit (since \$10,000 is less than \$10,350 (5.75% of \$180,000)), the applicable marginal tax rate for 2019 is 5.75%. Taxpayer makes a \$10,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2019. When Taxpayer files Taxpayer's 2019 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$50,000 and A, Inc.'s actual Georgia income is \$60,000; Taxpayer's actual share of Georgia income from BC Company is \$20,000 and Taxpayer received a guaranteed payment from BC Company of \$15,000; Taxpayer's actual share of Georgia income from XYZ Company is \$5,000 (the Taxpayer can choose to include this company even though it was not considered at the time of preapproval), Taxpayer can only claim \$8,625 qualified education donation tax credit (which is 5.75% of the \$150,000 actual income from Taxpayer's selected pass through entities), and the extra \$1,375 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$8,625 qualified education donation tax credit claimed but not used on the taxpayer's 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(e) For a corporation taxpayer, fiduciary taxpayer, an S corporation that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-21](#), or a partnership that makes the election to pay tax at the entity level under O.C.G.A. § [48-7-23](#), the credit amount shall not exceed 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, or the actual amount expended, whichever is less. A fiduciary cannot pass-through the credit to its beneficiaries.

1. Example: Taxpayer, a corporation, requests preapproval for the qualified education donation tax credit for calendar year 2019 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1 Taxpayer's intended contribution for 2019 is \$100,000; and Taxpayer's estimated income tax liability for the 2019 tax year is \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education donation tax credit for calendar year 2019. Taxpayer makes a \$100,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2019. When Taxpayer files their 2019 Georgia income tax return, Taxpayer's income tax liability for tax year 2019 is \$80,000, Taxpayer can only claim \$60,000 of qualified education donation tax credit (\$60,000 is 75% of their actual Georgia income tax liability for tax year 2019), and the extra \$15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified education donation tax credit claimed but not used on the taxpayer's 2019 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(f) Except as provided in subparagraph (3)(e) of this regulation, when the taxpayer is a pass-through entity which has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (3)(d) of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the recipient so that the preapproval, claiming and reporting forms can be filed in the name of its members, shareholders, or partners.

(4) **Credit Cap.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § [48-7-29.21](#) exceed \$5 million per calendar year.

(5) **Mandatory Electronic Preapproval Application.** A taxpayer seeking preapproval to claim the tax credits under paragraph (3) of this regulation must electronically submit Form IT-QED-TP1 through the Georgia Tax Center. The Department will not preapprove any qualified education donation tax credit where Form IT-QED-TP1 is submitted or filed in any other manner.

- (a) The qualified education donation tax credit shall be allowed on a first-come, first-served basis. The date the Form IT-QED-TP1 is electronically submitted shall be used to determine such first-come, first-served basis.
- (b) The Department will notify each taxpayer and the recipient of the contribution amount, the tax credit certificate number, and the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QED-TP1 was received.
- (c) On the day any Form IT-QED-TP1 is received for a calendar year that causes the calendar year limit in paragraph (4) of this regulation to be reached, then the remaining tax credits shall be allocated among the applicants who filed the Form IT-QED-TP1 on the day the calendar year limit was exceeded on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § [48-7-29.21](#) and this regulation. Only credit amounts on Form IT-QED-TP1(s) received on the day the calendar year limit was exceeded shall be allocated on a pro rata basis.
- (d) The contribution must be made by the taxpayer within sixty days of the date of the preapproval notice received from the Department and within the calendar year in which it was preapproved.
- (e) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § [48-7-29.21](#) and this regulation, then the amount of the qualified education donation tax credit shall not be preapproved or, if already claimed, the preapproved qualified education donation tax credit shall be disallowed. With respect to such disallowed credit, tax and interest shall be due.
- (f) Once the calendar year limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit under O.C.G.A. § [48-7-29.21](#), for such calendar year. If any Form IT-QED-TP1 is received after the calendar year limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.
- (6) **Letter of Confirmation.** Form IT-QED-FUND1 shall be provided by the recipient to the taxpayer to confirm the contribution within 15 days of the contribution.
- (7) **Claiming the Credit.** A taxpayer claiming the qualified education donation tax credit, unless indicated otherwise by the Commissioner, must submit Form IT-QED-TP2 with the taxpayer's Georgia tax return when the qualified education donation tax credit is claimed. A software program's Form IT-QED-TP2 that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.
- (8) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, any amount in excess of the credit amount limits in paragraph (3) of this regulation shall not be eligible for carry forward to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.
- (9) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § [48-7-29.21\(h\)](#) provides that no qualified education donation tax credit shall be allowed under O.C.G.A. § [48-7-29.21](#), with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. If the taxpayer is allowed the state income tax deduction in place of the charitable contribution deduction as allowed by the Internal Revenue Service, for purposes of this paragraph such deduction shall be considered a charitable contribution to the extent such deduction is allowed federally. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal deduction taken on a federal return for which a Georgia qualified education donation tax credit is allowed under O.C.G.A. § [48-7-29.21](#).
- (a) If a taxpayer's itemized deductions are limited federally (and therefore for Georgia purposes) because their Federal Adjusted Gross Income exceeds a certain amount, the taxpayer is only required to add back to Georgia taxable income that portion of the federal charitable deduction that was actually deducted pursuant to the following formula. The federal charitable deduction that must be added back to Georgia taxable income shall be the amount of the federal charitable contribution relating to the qualified education donation tax credit multiplied by the following ratio. The numerator is the amount of the itemized deductions subject to limitation and allowed as itemized deductions after the limitation is applied. The denominator is the total itemized deductions that are subject to limitation before the limitation is applied.

1. For example. A taxpayer has a \$2,500 charitable contribution relating to the qualified education donation tax credit and has property taxes of \$1,500 both of which are subject to limitation. The taxpayer also has investment interest expense of \$10,000 (which is not limited). Accordingly, the taxpayer's total itemized deductions before limitation are \$14,000. After applying the federal limitation, the taxpayer is allowed \$13,000 in itemized deductions. As such only \$3,000 (\$13,000 less the \$10,000 investment interest expense which is not limited) of the original \$4,000 charitable deduction and property taxes are allowed to be deducted. Applying the ratio from the subparagraph above, the taxpayer must add back \$1,875 of the charitable contribution to their Georgia taxable income  $((\$2,500) \times (\$3,000 / \$4,000))$ .

(10) **Designation of Contributions.** The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified education donation for the direct benefit of any particular school, or program, which the taxpayer's child or children attend.

(11) **Report by the Nonprofit Corporation Incorporated by the Georgia Foundation for Public Education.** The nonprofit corporation incorporated by the Georgia Foundation for Public Education shall electronically submit Form IT-QED-FUND2 to the Department through the Georgia Tax Center by January 12 each year. The report, Form IT-QED-FUND2, shall be prepared on a calendar year basis and shall include the following:

(a) The total number and dollar value of individual contributions and qualified education donation tax credits preapproved. Individual contributions include contributions made by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

(b) The total number and dollar value of corporate, fiduciary, S corporation, and partnership contributions and qualified education donation tax credits preapproved;

(c) The total number and dollar value of grants awarded to public schools;

(d) A list of donors (which includes the donor's name, address, and identification number), including the dollar value of each donation, the dollar value of each preapproved qualified education donation tax credit, and each Department issued tax credit certificate number; and

(e) Any other information required by the Commissioner.

The Department shall post on its website the information received from the nonprofit corporation incorporated by the Georgia Foundation for Public Education under subparagraph 11(a) through 11(c) of this regulation.

(12) **Sunset Date.** O.C.G.A. § [48-7-29.21](#), the qualified education donation tax credit, shall be repealed on December 31, 2023.

(13) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2022. Years beginning before January 1, 2022 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2022 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

**Cite as** Ga. Comp. R. & Regs. R. 560-7-8-.60

**AUTHORITY:** O.C.G.A. §§ [48-2-12](#), [48-7-29.21](#).

**HISTORY:** Original Rule entitled "Qualified Education Donation Tax Credit" adopted. F. Nov. 6, 2017; eff. Nov. 26, 2017.

**Amended:** F. Sep. 6, 2018; eff. Sep. 26, 2018.

**Amended:** F. Nov. 21, 2019; eff. Dec. 11, 2019.

**Note:** Correction of non-substantive typographical error in subparagraph (11)(b), "fiduicary" corrected to "fiduciary." Effective December 11, 2019.

**Amended:** F. Dec. 7, 2021; eff. Dec. 27, 2021.

# Department 590. RULES OF OFFICE OF SECRETARY OF STATE

## Chapter 590-4. COMMISSIONER OF SECURITIES

### Subject 590-4-4. INVESTMENT ADVISERS AND REPRESENTATIVES

#### 590-4-4-.01 Electronic Filing with Designated Entity

(1) **Designation.** Pursuant to O.C.G.A. Sec. [10-5-35](#), the Commissioner designates the web-based Investment Adviser Registration Depository ("IARD") to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Commissioner.

(2) **Use of IARD.** Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

a. **Electronic Signature.** When a signature or signatures are required by the particular instructions of any filing to be made electronically through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing electronically to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

b. **When filed.** Solely for purposes of a filing made electronically through IARD, a document is considered filed with the Commissioner when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) **Electronic Filing.** Notwithstanding subsection (2) of this Rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and notice is provided by the Commissioner. Any documents or fees required to be filed with the Commissioner that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the Commissioner.

(4) **Filed Record.** Every document filed with IARD or CRD shall be deemed to have been made in a "record" filed under the Act for purposes of O.C.G.A. Sec. [10-5-54](#).

(5) **Processing Fee.** Each Investment Advisor Representative applicant shall pay a \$5.00 processing fee payable through CRD. No portion of the processing fee is refundable. Applications will not be accepted, and thus will not be considered filed by the Commissioner, until registrants have paid the processing fee. The fee shall be effective for applications filed after December 31, 2021.

**Cite as** Ga. Comp. R. & Regs. R. 590-4-4-.01

**AUTHORITY:** O.C.G.A. §§ [10-5-35](#), [10-5-39](#), [10-5-70](#), [10-5-74](#).

**HISTORY:** Original Rule entitled "Untrue and Misleading Statements Prohibited" adopted. F. July 5, 1974; eff. July 25, 1974.

**Amended:** F. Feb. 24, 1987; eff. Mar. 16, 1987.

**Repealed:** New Rule entitled "Untrue and Misleading Statements" adopted. F. Dec. 21, 2004; eff. Jan. 10, 2005.

**Repealed:** New Rule entitled "Electronic Filing with Designated Entity" adopted. F. Nov. 18, 2011; eff. Dec. 8, 2011.

**Amended:** F. Mar. 9, 2012; eff. Mar. 29, 2012.

**Amended:** F. Dec. 9, 2021; eff. Dec. 29, 2021.

# **Department 590. RULES OF OFFICE OF SECRETARY OF STATE**

## **Chapter 590-4. COMMISSIONER OF SECURITIES**

### **Subject 590-4-5. BROKER-DEALERS AND AGENTS**

#### **590-4-5-.10 Fees**

- (1) A person required to pay a filing or notice fee under Section [10-5-39](#) shall transmit the fee through CRD.
- (2) In addition to the above fees, each applicant shall pay any and all processing costs or charges imposed by CRD incident to the registration or renewal.
- (3) Each applicant shall pay a \$5.00 processing fee made payable through CRD. No portion of the processing fee is refundable. Applications will not be accepted, and thus will not be considered filed by the Commissioner, until registrants have paid the processing fee. The fee shall be effective for applications filed after December 31, 2021.

**Cite as** Ga. Comp. R. & Regs. R. 590-4-5-.10

**AUTHORITY:** O.C.G.A. §§ [10-5-35](#), [10-5-39](#), [10-5-70](#), [10-5-74](#).

**HISTORY:** Original Rule entitled "Fees" adopted. F. Nov. 18, 2011; eff. Dec. 8, 2011.

**Amended:** F. Dec. 9, 2021; eff. Dec. 29, 2021.

## **Department 672. STATE DEPARTMENT OF TRANSPORTATION**

### **Chapter 672-9. RULES AND REGULATIONS FOR LICENSING OF CERTAIN OPEN-TO-THE-PUBLIC AIRPORTS**

#### **672-9-.01 Definitions**

The following words when used in Chapter 672-9 shall have the following meanings unless the context thereof indicates another meaning:

- (a) Aircraft: Any machine, whether heavier or lighter than air, used or designated for flight in the air.
- (b) Airplane: An engine-driven, fixed-wing Aircraft that is supported in flight by the dynamic reaction of the air against its wings.
- (c) Airport: Any area of land, water, or mechanical structure which is used for the landing and takeoff of Aircraft, and is open to the general public, as evidenced by the existence of a current and approved Federal Aviation Administration Form 7480-1 or any successor application, for such use without prior permission or restrictions and includes any appurtenant structures and areas which are used or intended to be used for airport buildings, other airport facilities, rights of way or easements; provided, however, that the term "Airport" shall not include the following facilities used as airports:
  - 1. Facilities owned or operated by the United States or an agency thereof except for some joint use airports;
  - 2. Privately owned facilities not open to the general public when such facilities do not interfere with the safe and efficient use of airspace of a facility for which a license or an Airport Operating Certificate issued under 14 C.F.R. Part 139 of the Regulations of the Federal Aviation Administration, or any successor regulations, has been granted;
  - 3. Facilities being operated pursuant to 14 C.F.R. Part 139 relating to certification requirements for airports serving scheduled air carrier operations, or any successor agency of the United States government.
- (d) Airport Hazard: Any structure, object of natural growth, or use of land which obstructs the defined Runway Primary Surface, safety area, and Approach and Departure Paths surfaces applicable to that particular Airport.
- (e) Airport License or License: License issued by the Department for the operation of an Airport, Heliport, Seaplane Base or any other designated open to the public Aircraft landing area in the state.
- (f) Airport Operations Areas: Any area of an Airport used or intended to be used for landing, takeoff or surface maneuvering of Aircraft, including but not limited to runways, taxiway, and apron areas.
- (g) Approach Path: An area of navigable airspace defined by the rules and regulations of the Department to insure safe ingress and egress of Aircraft to and from an Airport.
- (h) Department: Georgia Department of Transportation or any successor State agency.
- (i) Displaced Threshold: A threshold which is designated as the beginning of that portion of the runway that is available for landing Aircraft. A Displaced Threshold is located at a point on the runway other than the beginning of the full strength runway pavement. The paved area between the beginning of the full strength runway pavement and the Displaced Threshold may be used for takeoff or rollout of Aircraft.
- (j) FAA: Federal Aviation Administration or any successor Federal Agency.

- (k) Geometric Layout: Designated locations of Airport facilities and imaginary surfaces associated with minimum licensing standards.
- (l) Helicopter: A rotary wing Aircraft that depends principally upon the lift generated by one or more engine-driven rotors rotating on a substantially vertical axis for its primary means of propulsion.
- (m) Heliport: An area of land, water, or structure used or intended to be used for the landing and takeoff of Helicopters.
- (n) Imaginary Surfaces, Airport: The imaginary surfaces associated with Aircraft operations and airspace surrounding an Airport that is used to identify Obstructions to Aircraft navigation and operations.
- (o) Instrument Approach: An Aircraft approach for landing at an Airport using an electronic aid providing directional guidance.
- (p) Large Airplane: An Airplane of more than 12,500 lbs. maximum certified takeoff weight.
- (q) Non-precision Instrument Runway: A runway having an Instrument Approach procedure utilizing navigational aids with normally only horizontal guidance to Aircraft approaching for landing. Vertical guidance is possible on some Non-precision instrument runways.
- (r) Obstruction: Any penetration of an Airport imaginary surface described in Federal Aviation Regulation Part 77 and FAA Advisory Circular 150/5300-13 or as amended and superseded.
- (s) Open-to-the-Public Airport: An Airport that is publicly or privately owned which is open and available for use by the general flying public.
- (t) Person: an individual, firm, corporation, partnership, company, association, joint-stock association, municipality, county, or state agency, authority, or political subdivision and includes any director, employee, agent, trustee, receiver, assignee, or other similar representative thereof.
- (u) Precision Instrument Runway: A runway having an Instrument Approach procedure utilizing navigation aids that provide horizontal and vertical guidance to Aircraft approaching for landing.
- (v) Relocated Threshold: A runway threshold that is located at a point on the runway other than the beginning of the full strength pavement and the portion of the runway between the beginning of the full strength pavement and the relocated threshold cannot be used for landing or takeoff of Aircraft.
- (w) Restricted Use Airport: An Airport that is not open to the general public and requires prior permission from the Airport owner for use. Most Restricted Use Airports are military airfields and privately owned facilities.
- (x) Runway Object Free Area: An imaginary area centered on the runway centerline that is clear of aboveground objects protruding above the runway centerline, except for allowable objects necessary for air navigation or Aircraft ground maneuvering purposes.
- (y) Runway Primary Surface: A Runway Primary Surface is an imaginary surface that surrounds the runway and is centered along the runway centerline. The elevation of the primary surface is the same elevation as the nearest point on the runway centerline. The Runway Primary Surface extends to the runway end.
- (z) Runway Safety Area: The ground surface surrounding the runway prepared or suitable for reducing the risk of damage to Airplanes in the event of an undershoot, overshoot or excursion from the runway.
- (aa) Seaplane: An Airplane designed for, or appropriately modified to land on and takeoff from the surface of a body of water.
- (bb) Seaplane Base: An area of water used or intended to be used for the landing and takeoff of Seaplanes.

(cc) Small Airplane: An Airplane of 12,500 lbs. or less maximum certified takeoff weight.

(dd) Traffic Pattern: The traffic flow that is prescribed for Aircraft landing or taking off from an Airport.

(ee) Visual Runway: A runway having no Instrument Approach procedure and intended solely for the operation of Aircraft using visual approach procedures.

**Cite as** Ga. Comp. R. & Regs. R. 672-9-.01

**AUTHORITY:** O.C.G.A. §§ [32-2-2\(b\)](#), [32-9-8](#), [50-13-4](#).

**HISTORY:** Original Rule entitled "Definitions" was filed on July 3, 1979; effective July 23, 1979.

**Amended:** Filed June 24, 1987; effective July 14, 1987.

**Amended:** F. Jul. 12, 2013; eff. Aug. 1, 2013.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

### **672-9-.03 Airports: Licensing Minimum Standards**

A. Unobstructed Approach Paths for:

1. Runways less than 4000 ft shall begin at the runway end (marked threshold), shall slope upward at a minimum of 15:1 ratio, be centered along the extended runway centerline beginning at a width of 120 ft and extend for 500 ft to a width of 300 ft and continue at a width of 300 ft for an additional 2500 ft.

2. Runways 4000 ft. but less than 5000 ft shall begin at the runway end (marked threshold), slope upward at a minimum of 20:1 ratio, be centered along the extended runway centerline beginning at a width of 250 ft and extend for 2250 ft to a width of 700 ft and continue at a width of 700 ft for an additional 2750 ft.

3. Runways 5000 ft. or more shall begin at the runway end (marked threshold), slope upward at a minimum of 20:1 ratio, be centered along the extended runway centerline beginning at a width of 340 ft and extend for 2200 ft to a width of 1000 ft and continue at a width of 1000 ft for an additional 7,800 ft.

4. All penetrations of the Approach Paths, whether natural or manmade, constitute an Obstruction to navigation and a violation to licensing standards. If the Obstruction is not removed, the runway threshold must be displaced or relocated to a point on the runway that will provide a clear and unobstructed flight path.

B. Unobstructed Primary Surface (see above definition for Runway Primary Surface):

1. Shall be centered along runway centerline to the end of the runway.

2. Runways less than 4000 ft. shall have a primary surface width of 120 ft.

3. Runways 4000 ft. but less than 5000 ft. shall have a primary surface width of 250 ft.

4. Runways 5000 ft. or more shall have a primary surface width of 340 ft.

5. The primary surface shall be free of all Obstructions including natural growth and manmade objects. The only allowable Obstructions are frangible runway lights, frangible guidance signs, or navigation equipment that, by function, are required to be within the primary surface boundaries. The area not hard surfaced must be compacted and graded smooth with no ruts, humps, depressions or other potentially hazardous surface variations.

6. If the FAA Runway Object Free Area width is less than the Department's primary surface width set forth in this rule, the FAA Runway Object Free Area width will become the standard for Department use for the primary surface width for that particular area.

C. Unobstructed Runway Safety Area:

1. Shall be centered along runway centerline and extend 240 ft. beyond the end of the runway for all runways less than 5000 ft. in length and 300 ft. beyond the end of the runway for runways 5000 ft. or greater in length.

2. The width of the runway safety area shall be 120 ft. for all runways less than 5000 ft in length and 150 ft. for runways 5000 ft. or greater in length.

3. The Runway Safety Area shall be free of all Obstructions including natural growth and manmade objects. The only allowable Obstructions are frangible runway lights, frangible guidance signs, or navigation equipment that, by function, are required to be within the Runway Safety Area boundaries. The area that is not hard surfaced must be compacted and graded smooth with no ruts, humps, depressions or other potentially hazardous surface variations.

4. If the FAA Runway Safety Area length and width are less than the Department standards set forth in this rule, the FAA Runway Safety Area length and width will become the standard for Department use for the Runway Safety Area length and width for that particular Airport.

D. Airport Marking: All runways shall be marked in a manner that clearly identifies the boundaries of the landing area.

1. Minimum marking for hard surface runways and taxiways:

2. All markings on hard surfaced runways and taxiways shall be painted and must be maintained in legible condition.

3. Runway markings shall be white and taxiway markings shall be yellow. The size, shape, location and color of the marking shall be in compliance with the current FAA AC 150/5340-1, Standards for Airport Markings, as amended or superseded.

i. Minimum marking for turf or sod runways: All runway markings shall be colored white, securely attached to the surface, clearly visible from the Airport traffic pattern and identify the boundaries of the landing area.

ii. Threshold markings shall be L-shaped on each corner of each threshold. Runway side line markers shall be spaced at minimum intervals of 500 ft.

iii. Displaced Thresholds shall be identified by placing markers on each runway side at the displacement point. The markers shall be perpendicular to the runway with the inner edge aligned with the runway sideline markers.

E. Wind Direction Indicators:

1. All Airports are required to have an operational wind direction indicator. The wind direction indicator must be installed in a highly visible area easily observed from the air and the ground. It must be located in an open area free from Obstructions to insure accurate wind direction and approximate wind velocity. Night operations require that the wind indicator be lighted.

F. Airport Lighting: Runway lights are required for all Airports that conduct night operations.

1. Minimum Lighting Requirements:

i. The location, spacing, light intensity and lens color of runway, threshold and taxiway lights shall conform to the standards specified in the current FAA AC 150/5340-30, Design and Installation Details for Airport Visual Aids, as amended or superseded.

ii. All runway, threshold and taxiway lighting shall be maintained in an operational condition and shall not be obscured by natural growth such as grass or weeds.

2. Airport Beacon: All Airports with runway lights for night operations shall have an operational airport location beacon. The beacon shall have appropriately colored lenses to identify the type airport. The beacon shall be located at a site on or near the Airport at an elevation that will ensure that it is not obstructed by natural growth or manmade structures and is clearly visible from the air.

#### G. Runway, Taxiway and Apron Minimum Conditions:

##### 1. Runway and Taxiway Requirements:

i. The runway and taxiway surface must be maintained smooth and free of any defect or Obstruction that could damage Aircraft during operations. This requirement includes any pavement pot holes, depressions or humps.

ii. The lip of paved runways or taxiways must not exceed 1.5 inches in elevation from the top of the pavement to the runway shoulder. The drop should be only enough to allow adequate drainage from the runway and not pose a control problem for Aircraft.

iii. Turf runways must be graded smooth and grassed. The grass must be maintained, mowed to a height of less than 12 inches above the graded surface on the marked portions of the runway.

iv. The runway and taxiway width requirements shall conform to the current FAA AC 150/5300-13, Airport Design, as amended or superseded.

v. Seaplane Bases shall conform to the standards established by the controlling jurisdictions rules and regulations for operations on the body of water. If no specific standards have been established, the Seaplane Base shall conform to standard design guidance of FAA AC 150/5395-1, Seaplane Bases, as amended or superseded.

vi. Heliport landing areas and hover lanes/taxiways shall conform to the standards contained in FAA AC 150/5390-2, Heliport Design, as amended or superseded.

##### 2. Apron Requirements:

i. The Aircraft apron (parking area) is for the operation, servicing and parking of Aircraft only.

ii. The apron surface should be smooth and free of Obstructions or defects that could cause damage to Aircraft during operation.

iii. The apron length, width, taxilane and tiedown requirements shall conform to the current FAA AC 150/5300-13, Airport Design, as amended or superseded.

#### H. Fueling Area Requirements:

1. Sign(s) must be posted to prohibit open flames or smoking in the Airport fueling area.

2. Bonding cables must be present and in working order.

3. A fire extinguisher approved for the purpose of extinguishing petroleum product fires must be available during all fueling operations.

I. Geometric Layout: The most recent version of the Federal Aviation Administration's Advisory Circular 150/5300-13 Airport Design, as may be amended or superseded, is adopted in its entirety as it pertains to Airport construction design standards for the licensing of Airports within the State of Georgia. No License shall be denied to the owner or

operator of an Airport in existence on July 1, 1978, because of the failure to meet minimum standards prescribed with regard to Geometric Layout and separation between Airport runway, taxiway and Aircraft parking areas.

**Cite as** Ga. Comp. R. & Regs. R. 672-9-.03

**AUTHORITY:** O.C.G.A. §§ [32-2-2\(b\)](#), [32-9-8](#), [50-13-4](#).

**HISTORY:** Original Rule entitled "Airports: License" adopted. F. July 3, 1979; eff. July 23, 1979.

**Amended:** ER. 672-9-0.9-.03 adopted. F. July 23, 1979; eff. July 19, 1979, the date of adoption.

**Amended:** Permanent Rule adopted. F. Sept. 20, 1979; eff. Oct. 10, 1979.

**Repealed:** New Rule entitled "Airports: Licensing Minimum Standards" adopted. F. Jul. 12, 2013; eff. Aug. 1, 2013.

**Amended:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

### **672-9-.04 Airport License Issuance/Renewal/Revocation; Cease and Desist Order**

A. An Airport License shall be renewed on a biennial basis and a biennial inspection will determine if the facility meets licensing requirements.

B. An Airport License is not transferable with an Airport change of ownership.

C. Grandfathered licensing provisions will not be transferred with an Airport change of ownership.

D. New Airport ownership will contact the Department by written notification 30 days prior to ownership transfer.

E. On or after July 1, 2010, the Airport License fee for an original License and each renewal thereafter will be one hundred dollars (\$100.00) per runway up to a maximum of four hundred dollars (\$400.00) per Airport for the biennial period.

F. The owner of a licensed Airport shall prominently display the License at the Airport, or if there are no buildings at the Airport, at the place of business of the licensee.

G. The Airport owner shall maintain a current listing of all based Aircraft and each Aircraft shall be listed by type and federal Aircraft registration number (the N-number). A copy of the Aircraft listing shall be provided to the Department upon request.

H. The Airport owner is responsible for maintaining the facility in compliance with Department licensing standards throughout the biennial period. The runway, taxiway and Aircraft parking areas must conform to the minimum standards for licensing as established in Rule [672-9-.03](#) G.

I. The Airport owner shall be notified by letter of any violations of the minimum standards set forth herein discovered during an Airport inspection. The noted violation(s) may result in the immediate suspension/revocation of the current operating License if the Department determines that the nature of the violation(s) causes a serious safety hazard for Aircraft operating to and from the Airport. If noted violations are considered to be of no immediate serious hazard, a period of 120 days will be authorized for corrective action. Failure to correct the noted violations within the authorized period may result in the revocation of the Airport License. If revoked, an Airport License may be reinstated if the Airport owner reapplies for and meets all qualifications for licensure, which shall include, but is not limited to, demonstrating to the Department's satisfaction that any previously unaddressed violations have been fully corrected.

J. Airport Inspections and Enforcement:

1. Inspections. An applicant for or a holder of an Airport License shall offer full cooperation to any representative of the Department inspecting the Airport or proposed Airport site.

2. Enforcement. Applications for an Airport License or its renewal may be denied or a License may be revoked by the Department after notice and opportunity for a hearing is given to the licensee after the Department reasonably determines that:

i. The licensee has failed to comply with the conditions of the License or renewal thereof.

ii. The licensee has failed to comply with the minimum standards for the issuance of an Airport License as prescribed in the Department's Rules.

iii. Because of changed physical or legal conditions or circumstances, the Airport has become either unsafe or unusable for the purposes for which the License or renewal was issued.

3. Administrative Review. The decision of the Department to deny or revoke any License or renewal thereof shall be subject to review in the manner prescribed for the review of contested cases as prescribed by Chapter 13 of Title 50, the "Georgia Administrative Procedures Act."

4. Unlicensed Airport Ownership or Operation. It shall be unlawful for any Person to own or operate an Airport without first obtaining and thereafter maintaining a License as required by O.C.G.A. § [32-9-8](#).

i. Any Person owning or operating an Airport without a valid License shall be subject to the issuance of a cease and desist order by the Department in accordance with O.C.G.A. § [32-9-8\(i\)](#).

ii. Any Person violating the terms of a final cease and desist order shall be liable to the Department for a civil penalty not to exceed \$1,000.00 per violation per day. In assessing a maximum per-day civil penalty pursuant to these rules, the Department shall take into consideration the gravity of the violation, the history of any previous violations by such Person, and any other such contributing factors or circumstances in mitigation or aggravation thereof.

iii. Nothing set forth herein shall prevent the Department, in its discretion, from compromising or modifying any civil penalty imposed pursuant to O.C.G.A. § [32-9-8](#) or these rules.

iv. Any Person assessed a civil penalty for violating the terms of a final cease and desist order shall have the right to request a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any such request for a hearing shall be made within ten days after written notification of the penalty's assessment has been served on the Person. If a hearing is not requested in a timely manner, the civil penalty assessed shall be final and subject to collection by the Department.

v. All civil penalties assessed pursuant to O.C.G.A. § [32-9-8](#) and these rules shall be paid in full to the Department by certified check or money order within 30 days of their becoming final. All costs of collection including, but not limited to, interest, court costs, and attorney's fees, shall be recoverable by the Department against any Person whom the civil penalties have been assessed and are final but have not been timely paid.

**Cite as** Ga. Comp. R. & Regs. R. 672-9-.04

**AUTHORITY:** O.C.G.A. §§ [32-2-2\(b\)](#), [32-9-8](#), [50-13-4](#).

**HISTORY:** Original Rule entitled "Inspections and Enforcement" adopted. F. July 3, 1979; eff. July 23, 1979.

**Repealed:** New Rule entitled "Airport License Issuance/Renewal/Revocation" adopted. F. Jul. 12, 2013; eff. Aug. 1, 2013.

**Amended:** New title, "Airport License Issuance/Renewal/Revocation; Cease and Desist Order." F. Dec. 14, 2021; eff. Jan. 3, 2022.

## **672-9-.05 [Repealed]**

Cite as Ga. Comp. R. & Regs. R. 672-9-.05

**AUTHORITY:** O.C.G.A. §§ [32-2-2\(b\)](#), [32-9-8](#), [50-13-4](#).

**HISTORY:** Original Rule entitled "Construction or Establishment of Solid Waste Landfills Near Certain Public Airports" adopted. F. Dec. 17, 2004; eff. Jan. 6, 2005.

**Repealed:** New Rule entitled "Airport Licensing and Inspection Exemptions" adopted. F. Jul. 12, 2013; eff. Aug. 1, 2013.

**Repealed:** F. Dec. 14, 2021; eff. Jan. 3, 2022.

